

No. 3196

United States
Circuit Court of Appeals
For the Ninth Circuit.

JULIUS RHUBERG,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Oregon.

FILED
SEP 11 1911

United States
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JULIUS RHUBERG,

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Assignment of Errors.....	26
Bill of Exceptions.....	34
Bond on Writ of Error.....	31
Citation on Writ of Error.....	1
Motion of Defendant for Order for New Trial..	18
Motion for Order Arresting Judgment.....	20
Names and Addresses of the Attorneys of Record	1
Order Allowing Writ of Error.....	30
Order Enlarging Time for Filing Record and Docketing Case on Appeal.....	5
Petition for Writ of Error.....	24
Praecipe for Transcript on Writ of Error.....	169
TESTIMONY ON BEHALF OF GOVERN- MENT:	
ANDREWS, CORLISS B.....	35
DAVIS, LUTHER	50
Cross-examination	55
DAVIS, MRS. LUTHER	57
Cross-examination	58
SPROUL, RAY	59
Cross-examination	60
MITCHELL, WILLIAM	62
Cross-examination	64

	Index.	Page
TESTIMONY ON BEHALF OF GOVERN-		
MENT (Continued):		
SMITH, TRUEBLOOD		66
Cross-examination		69
TESTIMONY ON BEHALF OF DEFEND-		
ANT:		
BARNUM, L.....		140
Cross-examination		141
Redirect Examination		141
BIBBY, ARTHUR J.....		143
Cross-examination		143
Redirect Examination		145
DAVIS, LUTHER		145
HOLMES, S. B.....		142
Cross-examination		142
RHUBERG, JULIUS		75
Cross-examination		111
Cross-examination Resumed		127
Redirect Examination		134
Recross-examination		136
SMITH, HARVEY		138
Cross-examination		139
VON BORSTEL, CARSTEN		136
Cross-examination		137
Verdict		17
Writ of Error		3

Names and Addresses of the Attorneys of Record.

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Northwestern Bank Building, Portland, Oregon,

G. G. SCHMITT,

Oregonian Building, Portland, Oregon,

For the Plaintiff in Error.

MR. BERT E. HANEY,

United States Attorney, and

MR. BARNETT H. GOLDSTEIN,

Assistant United States Attorney,

For the Defendant in Error.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

UNITED STATES OF AMERICA,

Defendant in Error,

vs.

JULIUS RHUBERG,

Defendant and Plaintiff in Error.

Citation on Writ of Error.

United States of America,

District of Oregon,—ss.

To the United States of America, and to B. E. Haney,

United States Attorney for the District of Ore-

gon, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a Writ of Error filed in the clerk's office of the District Court of the United States for the

District of Oregon, wherein Julius Rhuberg is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said District, this 24 day of June, 1918.

CHAS. E. WOLVERTON,
District Judge. [1*]

United States of America,
State of Oregon,
County of Multnomah,—ss.

Due, timely and legal service by copy admitted at Portland, Oregon, of the within Citation, also such service by copy admitted of Petition for Writ of Error, Assignment of Error, Order Allowing Writ of Error, and Writ of Error, this 26 day of June, 1918.

JOHN J. BECKMAN,
Assistant U. S. District Attorney for the District of
Oregon. [2]

[Endorsed]: No. ——. In the District Court of the United States for the District of Oregon. United States of America, Plaintiff, vs. Julius Rhuberg, Defendant. Citation on Writ of Error. U. S. District Court, District of Oregon. Filed Jun. 27, 1918. By G. H. Marsh, Clerk.

*Page-number appearing at foot of page of original certified Transcript of Record.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

UNITED STATES OF AMERICA,

Defendant in Error,

vs.

JULIUS RHUBERG,

Defendant and Plaintiff in Error.

Writ of Error.

The United States of America,—ss.

The President of the United States of America to the
Judges of the District Court of the United
States for the District of Oregon, GREETING:

Because in the records, and proceedings, as also in
the rendition of the judgment of a plea which is in the
District Court before the Honorable Charles E. Wol-
verton, one of you, between the United States of
America, plaintiff and defendant in error, and Julius
Rhuberg, defendant and plaintiff in error, a manifest
error hath happened to the great damage of the said
plaintiff in error, as by complaint doth appear, and
we, being willing that that error, if any doth appear,
should be duly corrected, and full and speedy jus-
tice done to the parties aforesaid, and in this behalf
do command you, if judgment be therein given, that
then, under your seal, distinctly and openly you send
the record and proceedings aforesaid, with all things
concerning the same, to the United States Circuit
Court of Appeals for the Ninth Circuit, together with
this Writ, so that you have the same at San Fran-
cisco, California, within thirty days from the date

hereof, in the said Circuit Court of Appeals to be [3] then and there held, that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS The Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 24th day of June, 1918.

[Seal] G. H. MARSH,
Clerk of the District Court of the United States for
the District of Oregon.

By F. L. Buck,
Deputy.

Service of the foregoing Writ of Error made this 24 day of June, 1918, upon the District Court of the United States for the District of Oregon, by filing with me as Clerk of said Court a duly certified copy of said Writ of Error.

G. H. MARSH,
Clerk U. S. District Court, District of Oregon.

By F. L. Buck,
Deputy. [4]

[Endorsed]: No. 7788. 24-510. In the District Court of the United States for the District of Oregon. United States of America, Plaintiff, vs. Julius Rhuberg, Defendant. Writ of Error. U. S. District Court, District of Oregon. Filed Jun. 24, 1918. G. H. Marsh, Clerk. [5]

*In the District Court of the United States for the
District of Oregon.*

No. 7788.

UNITED STATES OF AMERICA,
Plaintiff and Defendant in Error,
vs.

JULIUS RHUBERG,
Defendant and Plaintiff in Error.

**Order Enlarging Time for Filing Record and
Docketing Case on Appeal.**

Now on this 10th day of July, 1918, the above-entitled case coming on before the Honorable Charles E. Wolverton, Judge of the above entitled court, and the Judge who signed citation upon writ of error in the cause above entitled, upon the motion of counsel for defendant and plaintiff in error for an order enlarging the time within which to file the record and docket the case with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California; and the defendant in error being represented, and making no objection thereto, and good cause appearing to me therefor; it is now, therefore,

HEREBY ORDERED that said defendant and plaintiff in error, Julius Rhuberg, may have to and including date of August 10, 1918, within which to file the record on his Writ of Error, and docket the case above-entitled with the Honorable Clerk of the

United States Circuit Court of Appeals at San Francisco, California, aforesaid.

CHAS. E. WOLVERTON,
District Judge. [51½]

[Endorsed]: No. 3196. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to August 19, 1918, to File Record Thereof and to Docket Case. Filed Aug. 7, 1918. F. D. Monckton, Clerk.

In the District Court of the United States for the District of Oregon, November Term, 1917.

BE IT REMEMBERED, That on the 1st day of March, 1918, there was duly filed in the District Court of the United States for the District of Oregon, an Indictment, in words and figures as follows, to wit: [6]

In the District Court of the United States for the District of Oregon.

INDICTMENT for violation of the Act of Congress Approved June 15, 1917, Known as the "Espionage Act."

UNITED STATES OF AMERICA,

vs.

JULIUS RHUBERG,

Defendant.

United States of America,
District of Oregon,—ss.

The Grand Jurors of the United States of America, for the District of Oregon, duly impaneled,

sworn and charged to inquire within and for said district, upon their oaths and affirmations, do find, charge, allege, and present :

COUNT ONE :

That at and during all the time between the 6th day of April, 1917, and the date of the finding of this indictment, the United States was then and is now at war with the Imperial German Government, said state of war having been on said 6th day of April, 1917, duly declared by Congress and duly proclaimed by the President of the United States of America in the exercise of the authority vested in them as by law provided ;

That Julius Rhuberg, the above-named defendant, on, to wit, October 27, 1917, at Kent, in the County of Sherman, State and District of Oregon, and within the jurisdiction of this court, then and there being, did wilfully, knowingly, unlawfully and feloniously, attempt to cause insubordination, disloyalty, mutiny, and refusal of duty, in, within, and amongst the military forces of the United States, to wit, men of registration age, and subject to and eligible for [7] draft and conscription under the provisions of the Act of Congress approved May 18, 1917, known as the "Selective Service Law," by then and there stating, declaring, debating, and agitating to and in the presence of said men, and in particular one Corliss B. Andrews, so being of the registration age and subject to draft and conscription as aforesaid, to the injury of the service of the United States, in substance and to the effect following, to wit :

1. That the moneyed men had caused the United

States to enter the war against Germany.

2. That Germany was in the right and the United States was in the wrong, and that he, the said defendant hoped Germany would win and that Germany was sure to win.

3. That the best thing they (meaning the said men of the registration age and subject to draft) could do when in battle would be to put up their hands and let the Germans take them prisoners.

4. That one German could lick ten Americans.

5. That the United States was so slow that Germany would have it whipped before it, the United States, got ready for war.

6. That the United States had no business in the war and ought not to have gone into it.

The said United States then and there being in a state of war with the Imperial German Government as aforesaid, as he, the said defendant, then and there well knew, and said speaking, debating, and agitating as aforesaid, was calculated to and intended by the said defendant to cause insubordination, disloyalty, mutiny, and refusal of duty in, within, and amongst the said military forces of the United States; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present: [8]

COUNT TWO:

That at and during all the time between the 6th day of April, 1917, and the date of the finding of this

indictment, the United States was then and is now at war with the Imperial German Government, said state of war having been on the said 6th day of April, 1917, duly declared by Congress and duly proclaimed by the President of the United States of America in the exercise of the authority vested in them as by law provided.

That Julius Rhuberg, the above-named defendant, on, to wit, the 27th day of October, 1917, at Kent, in the county of Sherman, state and district of Oregon, and within the jurisdiction of this court, then and there being, with the intent, then and there, by him, the said defendant, to obstruct the recruiting and enlistment service of the United States, to the injury of the service and of the United States, did then and there knowingly, wilfully, unlawfully and feloniously obstruct the said recruiting and enlistment service of the United States, to the injury of the service and of the United States, that is to say:

That he, Julius Rhuberg, the said defendant, at the time and place aforesaid, and to effect the purposes and objects aforesaid, did then and there state, declare and depose to one Corliss B. Andrews, and to other persons then and there assembled, the exact number and names of said persons being to the Grand Jurors unknown, amongst other things in substance and to the effect following, to wit:

1. That the moneyed men had caused the United States to enter the war against Germany.

2. That Germany was in the right and the United States was in the wrong, and that he, the said defendant, hoped that Germany would win, and that

Germany was sure to win. [9]

3. That the best thing they (meaning the said men of the registration age and subject to draft) could do when in battle would be to put up their hands and let the Germans take them prisoners.

4. That one German could lick ten Americans.

5. That the United States was so slow that Germany would have it whipped before it, the United States, got ready for war.

6. That the United States had no business in the war and ought not to have gone into it.

All of which statements, declarations, and utterances so then and there made by the defendant as aforesaid, were made with the intent, then and there, on the part of him, the said defendant, to prevent, hinder, delay, and obstruct the recruiting and enlistment service of the United States, to the injury of the service of the United States, and to discourage those desirous of enlisting in the military service of the United States, and to persuade and induce those persons subject to and eligible for military service in the United States, to refrain from enlisting in such service, and from complying with the compulsory requirements of the Selective Service Act, which said statements, declarations, and utterances, so made by the defendant as aforesaid, did interfere with and obstruct the recruiting and enlistment service of the United States to the injury of the service and of the United States.

And so the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the said defendant, Julius Rhuberg, at the time and place and

in the manner and form aforesaid, did knowingly, wilfully and feloniously, obstruct the recruiting and enlistment service of the United States to the injury of the service of the United States while the said United States was and is at war with the Imperial German Government; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [10]

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

COUNT THREE.

That at and during all the time between the 6th day of April, 1917, and the date of the finding of this indictment, the United States was then and is now at war with the Imperial German Government, said state of war having been on said 6th day of April, 1917, duly declared by Congress and duly proclaimed by the President of the United States of America, in the exercise of the authority vested in them as by law provided.

That Julius Rhuberg, the above-named defendant, on to wit, the 15th day of November, 1917, at Kent, in the county of Sherman, state and district of Oregon, and within the jurisdiction of this court, then and there being, did wilfully, knowingly and feloniously, make and convey false reports and false statements, with the intent, then and there, on the part of him, the said defendant, to interfere with the operation and success of the military and naval forces of the United States, by then and there stating, declar-

ing, and deposing to one E. R. Sproule, amongst other things, in substance and to the effect following:

1. That the moneyed men had caused the United States to enter the war against Germany.

2. That Germany was in the right and the United States was in the wrong.

3. That the Liberty Bonds will soon be sold for twenty-five cents on the dollar.

All of which said reports and statements so made by the said defendant as aforesaid, then and there were false and untrue, as he the said defendant then and there [11] well knew and all of which said reports and statements, so made by the said defendant, were calculated to and intended by the said defendant, to inflame the minds of the people and to arouse active opposition to the entry of the United States into the war with Germany, and were made with the intent and purpose then and there on the part of the said defendant, to interfere with the operation and success of the military and naval forces of the United States of America as aforesaid, and so the Grand Jurors, upon their oaths and affirmations aforesaid, do say that the said defendant, Julius Rhuberg, at the time and place and in the manner and form aforesaid, did knowingly, wilfully, and feloniously, make and convey false reports and false statements as aforesaid, with the intent of interfering with the operation and success of the military and naval forces of the United States, while the said United States was and is at war with the Imperial German Government as aforesaid; contrary to the form of the statute in such case made and pro-

vided and against the peace and dignity of the United States of America.

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

COUNT FOUR.

That at and during all the time between the 6th day of April, 1917, and the date of the finding of this indictment, the United States was then and is now at war with the Imperial German Government, said state of war having been on said 6th day of April, 1917, duly declared by Congress and duly proclaimed by the President of the United States of America, in the exercise of the authority vested in them as by law provided. [12]

That Julius Rhuberg, the \above-named defendant, on to wit, between the 1st day of June, 1917, and the 1st day of January, 1918, the exact dates and places being to the Grand Jurors unknown, in the county of Sherman, state and district of Oregon, and within the jurisdiction of this court, then and there being, with the intent then and there on the part of him, the said defendant, to obstruct the recruiting and enlistment service of the United States, to the injury of the service of the United States, did then and there, knowingly, wilfully, unlawfully, and feloniously obstruct the said recruiting and enlistment service of the United States, to the injury of the service of the United States, that is to say:

That Julius Rhuberg, the said defendant, at the times and place aforesaid, and to effect the purpose and object as aforesaid, did then and there speak,

debate, and agitate to and in the presence of William Mitchell and Luther Davis, and others to the Grand Jurors unknown, in substance and to the following effect, to wit:

1. That the moneyed men had caused the United States to enter the war against Germany.

2. That Germany was in the right and the United States was in the wrong, and that he, the said defendant, hoped Germany would win, and that Germany was sure to win.

3. That the best thing that they (meaning the said men of registration age and subject to draft) could do when in battle would be to put up their hands and let the Germans take them prisoners.

4. That one German could lick ten Americans.

5. That the United States was so slow that Germany would have it whipped, before it, the United States, got ready for war.

6. That the United States had no business in the war and ought not to have gone in it. [13]

And further, he the said defendant, did then and there, in the manner aforesaid, and to effect the object and purposes aforesaid, state, declare and depose to the persons aforesaid, certain filthy statements, declarations and utterances, the exact words, terms and language of which are too filthy, vile and scurrilous to be here set out and made a part of the records of this court, but which in substance were epithets and terms that were contemptuous, defamatory, and insulting to the institutions, laws and policies of the United States government, and which were then and there intended and calculated to bring

discredit upon the military institutions of the United States and to encourage and procure the disobedience to and violation of the existing laws and policies of the United States relating to the prosecution of its war with Germany; all of which statements, declarations, and utterances, as aforesaid, so then and there made by the defendant, as aforesaid, were made with the intent then and there on the part of him, the said defendant, to prevent, hinder, obstruct, and delay the recruiting and enlistment service of the United States, to the injury of the United States and to discourage those desirous of enlisting in the military service of the United States and to cause disobedience and violation of the existing laws of the United States relative thereto, and which said statements, declarations and utterances so made by the defendant as aforesaid, did obstruct the recruiting and enlistment service of the United States to the injury of the service of the United States.

And so, the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the defendant Julius Rhuberg, at the time and place and in the manner and form aforesaid, did knowingly, wilfully and feloniously obstruct [14] the recruiting and enlistment service of the United States, to the injury of the service and of the United States, while the said United States was and is at war with the Imperial German Government, contrary to the form of statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 28th day of February, 1918.

A true bill.

FRANK E. ANDREWS,
Foreman, United States Grand Jury.
BARNETT H. GOLDSTEIN,
Assistant United States Attorney.

[Endorsed]: A True Bill. Frank E. Andrews, Foreman, Grand Jury. Barnett H. Goldstein, Asst. U. S. Attorney. Filed in open court, March 1, 1918. G. H. Marsh, Clerk. [15]

And afterwards, to wit, on Monday, the 11th day of March, 1918, the same being the 7th Judicial day of the regular March term of said court; Present: the HONORABLE CHARLES E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to wit: [16]

*In the District Court of the United States for the
District of Oregon.*

No. 7788.

March 11, 1918. Indictment. Espionage Act.
THE UNITED STATES OF AMERICA,

vs.

JULIUS RHUBERG.

Now, at this day, come the plaintiff by Mr. Robert R. Rankin, United States Attorney, and the defendant in his own proper person and by Mr. G. G. Schmitt, of counsel. Whereupon said defendant

being duly arraigned upon the indictment herein for plea thereto says he is not guilty. And thereupon upon motion of said plaintiff,

IT IS ORDERED that the trial of this cause be and the same is hereby set for trial for Wednesday, April 24, 1918. [17]

AND AFTERWARDS, to wit, on the 9th day of May, 1918, there was duly filed in said court, a verdict, in words and figures as follows, to wit: [18]

*In the District Court of the United States for the
District of Oregon.*

Verdict.

UNITED STATES OF AMERICA,

vs.

JULIUS RHUBERG.

We, the jury duly impaneled to try the above-entitled cause, do find the defendant Not Guilty as charged in Count One of the Indictment and Not Guilty as charged in Count Two of the Indictment and Guilty as charged in Count Four of the Indictment herein.

Dated at Portland, Oregon, this 8th day of May, 1918.

HENRY W. HALL,
Foreman,

Filed, May 9, 1918.

G. H. MARSH,
Clerk. [19]

AND AFTERWARDS, to wit, on the 7th day of June, 1918, there was duly filed in said court, a Motion for New Trial, in words and figures as follows, to wit: [20]

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA,

vs.

JULIUS RHUBERG, Defendant.

Motion of Defendant for Order for New Trial.

Comes now Julius Rhuberg, defendant above-named, and moves the Honorable Court above-entitled for an order setting aside the verdict and judgment in the case above-entitled and granting defendant a new trial for errors of law committed in the trial of said cause and duly excepted to by defendant as follows:

1.

Error of the Court in admitting and receiving testimony of statements of defendant made prior to the 6th day of April, 1917, and prior to the declaration by the United States of war upon the Imperial German Government over the objection of defendant.

2.

Error of the Court in refusing and overruling the motion of defendant for a directed verdict of Not Guilty for failure of proof of the offense charged in Count Four of the Indictment.

3.

Error of the Court in refusing and overruling the motion of defendant for a directed verdict of Not Guilty upon Count Four of the Indictment by reason of a variance between the charge made in Count Four of the Indictment and the evidence and proof submitted to sustain such charge against defendant.
[21]

4.

Error of the Court in failing to give to the jury defendants requested instruction numbered three.

Dated at Portland, Oregon, this seventh day of June, A. D. 1918.

RIDGWAY & JOHNSON,
G. G. SCHMITT,

Attorneys for Defendant.

United States of America,
District of Oregon,—ss.

I, Everett A. Johnson, one of the attorneys for the defendant in the above-entitled cause, do hereby certify that I have prepared the foregoing motion of defendant for an order setting aside the judgment and verdict in said cause and granting defendant a new trial. That in my opinion the said motion is well founded in law and the same is not interposed for purposes of delay.

EVERETT A. JOHNSON.

State of Oregon,
County of Multnomah,—ss.

Due, timely, and legal service by copy admitted
at Portland, Oregon, this 7th day of June, 1918.

B. H. GOLDSTEIN,

Asst. U. S. Attorney for Oregon.

Filed June 7, 1918.

G. H. MARSH,

Clerk. [22]

AND AFTERWARDS, to wit, on the 7th day of
June, 1918, there was duly filed in said court, a
Motion in Arrest of Judgment, in words and figures
as follows, to wit: [23]

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA

vs.

JULIUS RHUBERG,

Defendant.

Motion for Order Arresting Judgment.

Comes now Julius Rhuberg, defendant above
named, and moves the Honorable Court above en-
titled for an order arresting judgment in the above-
entitled cause for the reason that Count Four of the
indictment in said cause fails to state facts sufficient
to constitute an offense against the United States in
the following particulars:

A.

Said count of the indictment wholly fails to allege
the intended recruiting or enlistment in the military

or naval services of the United States of William Mitchell or Luther Davis or any other person whomsoever.

B.

That said count of the indictment wholly fails to allege and charge the defendant with knowledge or notice of the proposed or intended enlistment in the military or naval services of the United States of William Mitchell or Luther Davis or any other person whomsoever.

Dated at Portland, Oregon, this seventh day of June, A. D. 1918.

RIDGWAY & JOHNSON,
G. G. SCHMITT,

Attorneys for Defendant.
United States of America,
District of Oregon,—ss.

I, Everett A. Johnson, one of the attorneys for the defendant in the above-entitled [24] court do hereby certify that I have prepared the foregoing motion of defendant for arrest of judgment in said cause. That in my opinion the said motion is well founded in law and the same is not interposed for purposes of delay.

EVERETT A. JOHNSON.

State of Oregon,
County of Multnomah,—ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 7th day of June, 1918.

BARNETT H. GOLDSTEIN,
Asst. U. S. Attorney for Oregon.

Filed June 7, 1918.

G. H. MARSH,
Clerk. [25]

And afterwards, to wit, on Monday, the 17th day of June, 1918, the same being the 91st judicial day of the regular March term of said court; Present: the Honorable CHARLES E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to wit: [26]

*In the District Court of the United States for the
District of Oregon.*

No. 7788.

June 7, 1918. Indictment. Espionage Act.

UNITED STATES OF AMERICA

vs.

JULIUS RHUBERG,

June 17, 1918.

Now, at this day, comes the plaintiff by Mr. Barnett H. Goldstein, Assistant United States Attorney, and the defendant by Mr. Everett A. Johnson and Mr. G. G. Schmitt, of counsel. Whereupon said cause comes on to be heard by the Court upon the motion of said defendant for an order in arrest of judgment and upon his motion for a new trial herein, and the court having heard the arguments of counsel and now being fully advised in the premises,

IT IS ORDERED that said motions be, and the same are each hereby overruled. Whereupon, upon motion of said plaintiff,

IT IS ORDERED that the time for the passing

of sentence upon said defendant be, and the same is hereby set for Monday, June 24, 1918, at ten o'clock A. M. [27]

And afterwards, to wit, on Monday, the 24th day of June, 1918, the same being the 97th judicial day of the regular March term of said court; Present: the Honorable CHARLES E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to wit: [28]

In the District Court of the United States for the District of Oregon.

No. 7788.

June 24, 1918. Indictment. Act of June 15, 1917.

UNITED STATES OF AMERICA

vs.

JULIUS RHUBERG,

Now, at this day, come the plaintiff by Mr. Bert E. Haney, United States Attorney, and the defendant in his own proper person and by Mr. Everett A. Johnson, and Mr. G. G. Schmitt, of counsel. Whereupon this being the day set by the Court for the sentence of said defendant upon the verdict herein,

IT IS ADJUDGED that said defendant be imprisoned in the United States Penitentiary at McNeil Island, Washington, for the term of fifteen months, and that he do pay a fine of \$2,000, and that he stand committed until this sentence be performed or until he be discharged according to law. [29]

AND AFTERWARDS, to wit, on the 24th day of June, 1918, there was duly filed in said court,

a Petition for Writ of Error, in words and figures as follows, to wit: [30]

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA

vs.

JULIUS RHUBERG,

Defendant.

Petition for Writ of Error.

Your petitioner, Julius, Rhuberg, defendant in the above-entitled cause, now comes and brings this, his petition, as plaintiff in error, for a Writ of Error to the District Court of the United States for the District of Oregon, and thereupon your petitioner shows:

That on the 24th day of June, 1918, there was rendered and entered in the above-entitled cause, a judgment in and by said District Court of the United States for the District of Oregon, wherein and whereby your petitioner was sentenced and adjudged to pay a fine of Two Thousand Dollars and be imprisoned in the United States penitentiary at McNeils Island, Washington, for a period of fifteen months.

And your petitioner further shows that he is advised by counsel that there are manifest errors in the records and proceedings at and in said cause, in the rendition of said judgment and sentence, to the great damage of your petitioner, said defendant, all of which errors will be made to appear by examination of the said record, and more particularly by an exam-

ination of the Bill of Exceptions by your petitioner tendered and filed herein, and in the assignments of error filed and tendered herewith. [31]

To the end, therefore, that the said Judgment, sentence, and proceedings may be reversed by the United States Circuit Court of Appeals of the Ninth Circuit, your petitioner prays that a Writ of Error may be issued, directed therefrom to the said District Court of the United States for the District of Oregon, returnable according to law and the practice of this court, and that there may be directed to be returned, pursuant thereto, a true copy of the record, bill of exceptions, assignments of error, and all proceedings had in said cause, that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the errors, if any have happened, may be fully corrected and full and speedy justice done your petitioner.

And your petitioner now makes his assignments of error, filed herewith, upon which he will rely, and which will be made to appear by the return of said record in obedience to said writ.

WHEREFORE, your petitioner prays the issuance of a writ as hereinbefore prayed for, and prays that his assignments of error, filed herewith, may be considered as his assignments of error upon the writ, and that the judgment rendered in this cause may be reversed and held for naught, and said cause remanded for further proceedings, and also that an order be made fixing the amount of security which your said petitioner shall give and furnish upon said writ of error, and that upon the giving of such secur-

ity all further proceedings in this court against the said petitioner be suspended and stayed until the determination of the said writ of error in and by the said Circuit Court of Appeals.

G. G. SCHMITT,
RIDGWAY & JOHNSON,
Attorneys for Petitioner.

Filed June 24, 1918.

G. H. MARSH,
Clerk. [32]

AND AFTERWARDS, to wit, on the 24th day of June, 1918, there was duly filed in said court, an Assignment of Errors, in words and figures as follows, to wit: [33]

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA

vs.

JULIUS RHUBERG,

Defendant.

Assignment of Errors.

Now comes the plaintiff in error, defendant above named, by his counsel, and presents this, his assignments of error, containing the assignments of error upon which he will rely in the United States Circuit Court of Appeals for the Ninth Circuit, and specifies the following particulars wherein it is claimed that the District Court erred in the course of the trial of said cause,

1. Error of the Court in overruling the motion of defendant for a directed verdict of not guilty for

failure of proof of the offense charged in Count Four of the indictment.

2. Error of the Court in failing and refusing to direct a verdict of not guilty for failure of proof of the offense charged in Count Four of the indictment.

3. Error of the Court in overruling the motion of defendant for a directed verdict of not guilty of the offense charged in Count Four of the indictment by reason of variance between the charge made in said count and the evidence and proof submitted to sustain such charge against defendant.

4. Error of the Court in failing and refusing to direct a verdict of not guilty of the offense charged in Count Four of the indictment by reason of variance between the charge made in said count and the evidence and proof submitted to sustain such charge against defendant. [34]

5. Error of the Court in refusing to give the jury the following instruction:

“Counts II and IV of the indictment, while charging distinct violations by the defendant of the statute known as the Espionage Act, in that the statements alleged to have been made by the defendant Rhuberg, and set forth in these counts of the indictment, were made at different times, and to different persons, are yet largely identical in character. They are both drawn under the same provision of the statute, a provision which makes it unlawful for any person while the United States is at war with any foreign power, to willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service, or to the injury of the United

States. You will therefore note that there are three elements which must be proven before a verdict of guilty may be rendered upon either of these counts of the indictment. First, there must exist the state of war mentioned; second, there must be a wilful obstruction of recruiting or enlistment; third, there must result an injury to the recruiting or enlistment service, or to the United States. I instruct you, gentlemen of the jury, that if the Government has failed to prove to your satisfaction, and beyond a reasonable doubt, any one of these three elements of the offense charged in Counts II and IV of the indictment, your verdict must necessarily be as to these counts a verdict of not guilty. And since the Government has not shown that the statements charged in Counts II and IV of the indictment to have been made by the defendant Rhuberg did in fact result in any injury whatsoever, either to the recruiting or enlistment service of the United States, or to the United States, [35] your verdict upon Counts II and IV of the indictment must be verdicts of not guilty."

6. Error of the Court in refusing to give the jury the following instruction:

"I instruct you, gentlemen of the jury, that before you can find the defendant guilty of the charge preferred against him in the fourth count of the indictment, you must find that the statements charged in that count to have been made by him, or some of them, were made substantially in the form alleged, in the presence of both Luther Davis and William Mitchell, and since it conclusively appears by the

testimony of both the Government and the defense that no such statements or any statements were made by the defendant since the Espionage Act became a law, in the presence of these two men, you must find a verdict of not guilty upon this count of the indictment. It is incumbent upon you to try this defendant solely upon those charges preferred against him in this indictment, and if at times other than those mentioned in the indictment he has violated some law of the United States, he cannot in this trial be tried or convicted of such other offenses.”

7. Error of the Court in overruling the objection of the defendant to and receiving in evidence and in permitting the witness Luther Davis to testify to statements made to him by defendant, and conversations had between him and defendant, upon subjects relating to the war, and had and made prior to the entry of the United States into the war.

8. Error of the Court in overruling the motion of the defendant for arrest of judgment by reason of the failure of Count Four of the indictment to state facts sufficient to constitute an offense against the United States. [36]

9. Error of the Court in overruling the motion of defendant for an order setting aside the verdict and judgment of conviction and granting defendant a new trial.

WHEREFORE, defendant, plaintiff in error, prays that the above and foregoing assignments of error be considered as his assignments of error upon the writ of error, and further prays that the judgment heretofore rendered in this cause may be reversed

and held for naught, and that plaintiff in error and defendant above named have such and further relief as may be in conformity to law and the practice of the Court.

G. G. SCHMITT,
 RIDGWAY & JOHNSON,
 Attorneys for Defendant and Plaintiff in Error.
 Filed June 24, 1918.

G. H. MARSH,
 Clerk. [37]

And afterwards, to wit, on Monday, the 24th day of June, 1918, the same being the 97th Judicial day of the regular March Term of said court; Present: the HONORABLE CHARLES E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to wit: [38]

*In the District Court of the United States for the
 District of Oregon.*

UNITED STATES OF AMERICA,
 vs.

JULIUS RHUBERG,

Defendant.

Order Allowing Writ of Error.

Now, on this 24th day of June, 1918, this cause coming on to be heard on the motion of the defendant Julius Rhuberg, for a writ of error, and it appearing to the Court that a petition for a writ of error, together with assignments of error, have been duly filed, it is

ORDERED, That a writ of error be and hereby is

allowed, to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein, and that the amount of bond on said writ of error be and the same is hereby fixed at Five (\$5,000.00) Thousand Dollars, and that execution of sentence be stayed pending the prosecution of said writ of error.

CHAS. E. WOLVERTON,
District Judge.

Filed, June 24, 1918.

G. H. MARSH,
Clerk. [39]

And afterwards, to wit, on the 29th day of June, 1918, there was duly filed in said court, a Bond on Writ of Error, in words and figures as follows, to wit: [40]

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA,

vs.

JULIUS RHUBERG,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, Julius Rhuberg, the above-named defendant, as principal, and Andy Patjens and Henrich Patjens, as sureties, are held and firmly bound unto the United States of America in the penal sum of Five Thousand Dollars, for the payment of which, well and truly to be made, we bind ourselves and each

of us, our heirs, executors, administrators forever, firmly by these presents.

SEALED with our seals and dated and signed this 29th day of June, 1918.

WHEREAS, at the March term, 1918, of the District Court of the United States for the District of Oregon, in a cause therein pending, wherein the United States was plaintiff and the said Julius Rhuberg was defendant, a judgment was rendered against the said defendant on the 24th day of June, 1918, wherein and whereby the said defendant was sentenced to pay a fine of Two Thousand Dollars and be imprisoned in the United States penitentiary at McNeils Island, Washington, for a period of fifteen months, and the said defendant has prayed for and obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to review the said judgment and sentence in the afore-said action, and the citation directing the United States to be and appear in the said [41] United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, thirty days from and after the date of said citation, has issued, which citation has been duly served.

NOW, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the said Julius Rhuberg shall appear either in person or by attorney in the said Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for a hearing of said cause in said court, and prosecute his writ of error and abide by the orders made by the said United States Circuit Court of Appeals, and shall

surrender himself in execution as said court may direct, if the judgment and sentence against him shall be affirmed, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 29th day of June, 1918.

JULIUS RHUBERG, (Seal)

Principal.

ANDY PATJENS, (Seal)

Surety.

HENRICH PATJENS, (Seal)

Surety.

Signed, sealed, and delivered in presence of:

F. H. DRAKE.

E. A. JOHNSON.

United States of America,
District of Oregon,—ss.

We, Andy Patjens and Henrich Patjens, each being first duly sworn, for himself says: That I am a resident and freeholder in the state of Oregon and that I am worth the sum of Five Thousand Dollars over and above all my just debts and liabilities, and exclusive of property exempt from execution.

ANDY PATJENS,

HENRICH PATJENS. [42]

Subscribed and sworn to before me this 29 day of June, 1918.

[Seal]

FREDERICK H. DRAKE,

United States Commissioner for Oregon.

Approved this 29 day of June, 1918.

CHAS. E. WOLVERTON,
District Judge.

Address of sureties: Shaniko, Oregon.

O. K. as to qualification of surety. Haney, U. S.
Atty.

United States of America,
State of Oregon,
County of Multnomah,—ss.

Due, timely, and legal service by copy admitted at
Portland, Oregon, this 29 day of June, 1918.

B. E. HANEY,
U. S. District Attorney for the District of Oregon.
Filed, June 29, 1918.

G. H. MARSH,
Clerk. [43]

And afterwards, to wit, on the 10th day of July,
1918, there was duly filed in said court, a Bill of Ex-
ceptions, in words and figures as follows, to wit: [44]

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA,

vs.

JULIUS RHUBERG,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED, That the above-entitled
cause came on for trial in the District Court of the
United States for the District of Oregon on the 6th
day of May, 1918, before the Honorable Charles E.

Wolverton, Judge, and a jury duly empanelled to try said cause, the Government appearing by Mr. Bert E. Haney, United States Attorney, and B. H. Goldstein, Assistant United States Attorney, and the defendant appearing in person, and by G. G. Schmitt and Ridgway & Johnson, his counsel, whereupon, the opening statements having been made by counsel for the respective parties to the jury, the following proceedings were thereupon had.

**Testimony of Corliss B. Andrews, for the
Government.**

The Government, to substantiate the issues on its part called as a witness CORLISS B. ANDREWS, who, being duly sworn, testified that he lived near Kent, Sherman County, Oregon, was twenty-five years of age, had lived in Sherman County about seven years, had married a Miss Patjen, a girl of German parentage, on February 26, 1917, and had registered June 5, 1917, for military service under the Selective Service Act, having married several months before his registration; that witness had registered at Kent, and was subject to draft, although placed in the second class; that he had known defendant about three years, having first met him at the home of one Von Borstel, a farmer near Kent, operating a ranch consisting of about six sections of land; that witness had happened to be at the [45] Von Borstel home because of his acquaintance with sons of Von Borstel, and that this first meeting between defendant and witness had occurred after Germany and the allied nations were at war; that the first discussion witness

(Testimony of Corliss B. Andrews.)

had with defendant concerning war topics was during the winter of 1914-1915, at what is known as the "Mackin ranch," likewise belonging to Von Borstel, and situated south of the town of Kent, the ranch consisting of three or more sections of land, when witness testified that the defendant had stated to him "that this country had no business shipping ammunition over there, that we were not neutral so long as we did that, and that England was trying to shut Germany out of commerce on the seas, and trying to keep them down, and told me what a good country Germany was"; also "that German people had more rights than American people did, and that they were governed better, and were justified in using the submarines, because we had no business shipping ammunition there, and that was the only way they could stop it."

The witness further testified that he had had conversations with defendant at different times, but could not tell the exact times, having seen defendant off and on during all the time between the occasion of first getting acquainted with him, and up to the winter of 1917-1918; that at most of these conversations war topics were discussed between witness and the defendant; that the defendant maintained his former attitude toward the question of the right of Germany in the war.

The witness further testified that he recalled the time when the United States entered the war; that subsequent thereto he had conversations with the defendant concerning our entrance into the war, par-

(Testimony of Corliss B. Andrews.)

ticularly during the Fall, and probably the month of November of the year 1917, after he had registered, and when he was awaiting a call to the service; that the conversations had between witness and defendant referred to, and had subsequent to our entry [46] into the war, were had at the home of Von Borstel, known as the "home ranch," the defendant at that time knowing that witness had registered for the draft, because witness had told him witness testifying that at that time and place defendant told him that if he, the witness, was taken over to France, and was in battle, and got in a tight place, to throw up his hands and let the Germans take him prisoner, and tell them his connections there in Germany, and it would be all right; witness further testifying that defendant told him that this country was too slow, that Germany would have us whipped before we got ready, that Germany was in the right and the United States was in the wrong, and that he, defendant, "hoped Germany would win, and she was sure to win"; also that the monied men had caused the United States to go into the war, and that we had entered the war in order to get our money that we had loaned out; also that in talking about the fighting ability of the Germans defendant had stated to witness that the Germans were fighting one against ten now, and that we would just make the eleventh one, and that one German could lick ten Americans; that defendant further stated to witness that "that stuff that was in the papers about Belgian atrocities were all lies, that they were just trying to stir up the people,"

(Testimony of Corliss B. Andrews.)

and that defendant justified it; that there was considerable talk at that time concerning the constitutionality of the draft law, and that defendant had stated to witness that he did not know whether or not the law was constitutional; that defendant further stated to witness that if the United States kept in the war for two or three years, the Liberty Bonds would not be worth more than twenty-five or fifty cents on the dollar; that the statements testified to were made at different times, witness stating that he had two or three talks with defendant in November, rode with him once on the road, and met defendant once at the Mackin ranch in the spring of 1917, when there to get a bull. [47]

Questioned as to what effect the statements of Rhuberg made prior to our entry into the war, concerning the rights of Germany, and the unneutrality of the United States, had had upon him, the defendant testified that it had made him believe that Germany was right, and being in the right, was justified in doing some of the things that were being done, and that the United States was not neutral, and was aiding England as against Germany; that witness believed that the statements made to him by defendant subsequent to our entrance into the war were made with knowledge on the part of the defendant of the effect thereof upon the witness, basing his belief upon the fact that in discussing these matters prior to the war witness expressed himself, as had defendant, as believing that Germany was right at the time; that defendant had never discussed with

(Testimony of Corliss B. Andrews.)

witness the Lusitania incident, so far as he could recall.

The witness further testified that after he had registered he had been notified by the Government authorities to appear for examination, had been examined, and had been placed in the order of draft, being the last man in the first call. Likewise, that he had been notified three times to be ready to answer a call to the service, the first time by his blue card, to be ready on 24 hours' notice, the next time in October by telephone, and the third time in November by letter; that the conversation had between witness and defendant testified to by him, and relative to throwing up his hands, was subsequent to his second notification; that in discussing with defendant the relative merits and ability of the American and German army, defendant stated to witness that the German army was far superior, because of long training, and that the boys in the United States did not have the constitution to stand up under it; that it came to the mind of the witness that the statements of defendant testified to were made to him by defendant for the purpose of discouraging him, but that defendant had never told him not to go to war. [48]

Upon cross-examination, witness testified that he had lived in Sherman County, Oregon, about seven years, and was then working by the month for one Arthur Hold; was not running his own ranch, and never had; that he had been in Sherman County about four years before meeting defendant, working at different places; that witness believed he had first

(Testimony of Corliss B. Andrews.)

met defendant while employed in the town of Kent at the store of one Erbe, a general merchandise dealer, by whom he had been employed for a few weeks; that he had gone to the Von Borstel home on the occasion of his first meeting with defendant, to see the Von Borstel boys; that he did not recall the time of this first meeting, other than that it was in the fall, nor did he recall any of the circumstances except that he was out there with the boys, and to see them; that he did not remember whether he had any talk with defendant upon the occasion of their first meeting, nor could not say how long it was between his first meeting with defendant and the time when he went to the Mackin ranch for a stay of several weeks, but that the interim between the first meeting and the visit to the Mackin ranch was one of probably two or three months, during which time he did not recall again seeing defendant.

Questioned concerning how his visit to the Mackin ranch came about, the witness testified that he was in town, and one of the Von Borstel boys asked him to go out and stay with them for a while; that he had just been dismissed from his employment with Erbe, was out of work, and at the suggestion of Amandus Von Borstel, who, with defendant, was running the Mackin ranch, he had spent a period of probably two weeks at the Mackin ranch; that during his visit at the Mackin place the defendant Rhuberg did the cooking, and that he, the witness, was pretty near broke when he went to the Mackin ranch on the occasion in question; the witness fur-

(Testimony of Corliss B. Andrews.)

ther testifying that the Mackin ranch was the home of defendant when he was not on the Von Borstel home ranch, defendant making his [49] home on one ranch or the other; that he, the witness, did not know when he next saw defendant after the visit at the Mackin house, but had seen him on different occasions at the Von Borstel home place; that his first talk with defendant concerning war questions was at the Mackin ranch on the occasion of the visit spoken of, and at a time in the Fall of 1914, when the war had just broken out, and the United States was not involved in any way; that it was during that visit, when the defendant told witness about the United States not being neutral, and sending ammunition over to the allies, and justified the submarine attacks on boats of the United States, witness when asked if that was not at a time before the submarine attacks on our boats had been made at all, stating that he did not know, and thought not, and didn't remember just when it started, but that he was pretty sure the subject of submarine attacks had been discussed during the occasion of his visit referred to.

The witness further testified that he had discussed war subjects with defendant ever since he had gotten acquainted with him; that their discussions were more or less general, so far as concerned the war, and that the war might have been a very common subject of discussion whenever one man met another during those years, he, the witness, talking about it quite a bit.

(Testimony of Corliss B. Andrews.)

Questioned concerning the occasion when he visited the Mackin ranch to get a bull, the witness stated that late in the spring of 1917, and after the United States had gotten into the war, witness had gone to the Mackin ranch for the purpose stated, and after having dinner there with the defendant, had gone with the defendant and another to the pasture on horseback to get the animal out of the field; that witness and defendant were talking together on this occasion, but that so far as the witness can recall, nothing whatsoever was said concerning war questions, nor was there any discussion of the war. [50]

The witness further testified that the next occasion he recalled of meeting the defendant was in the fall of that year, while riding to town upon the wagon of a brother-in-law of the witness which caught up with one driven by the defendant, when witness got off the wagon of his brother-in-law and rode for some distance with defendant; that this meeting upon the road occurred in the fall of 1917, and after war had broken out between America and Germany, and that the witness and defendant were the only persons upon or in defendant's wagon on that occasion; that they rode and talked together for perhaps ten minutes, and that while witness had theretofore registered under the Selective Service Act, had been classified, and had gotten his classification serial number, and was expecting a call at any time, all of which he testified was known to the defendant, there was not on that occasion, so far as he could recall, any talk or discussion between

(Testimony of Corliss B. Andrews.)

them whatsoever concerning war subjects, although at that time they had been acquainted for several years, had dined together, had lived in the same house, and had felt friendly toward each other.

The witness further testified that the next occasion of his meeting defendant after the ride of witness and defendant upon the defendant's wheat wagon alluded to, was in October or November of the year 1917, while witness was working for one Clarke and passed through the Von Borstel place in going or coming from the place of his employment to the home of his father-in-law, where his wife was then employed and doing general housework, further stating that his wife had since left the home of her father, and was then employed by some neighbor; that while the Von Borstel house was not upon a public road, it was on the route of the shortest way between Clarkes and the home of the father-in-law; that witness stopped at the Von Borstel house to see one of the Von Borstel boys, but that the boy he wanted to see was not there; that he thereupon went into the Von Borstel house and began talking [51] with defendant, on this occasion not seeing defendant until he went into the house; that he had not been asked into the house, but went in of his own accord, and found the defendant with Mr. Von Borstel; that he did not know how the war came to be the subject of conversation; did not believe he, the witness, had opened up the subject, but could not tell how it started; that it was on this occasion when the defendant Rhuberg told him that if he, the witness, was

(Testimony of Corliss B. Andrews.)

taken to France and got in battle over there, and in a tight place, to throw up his hands and let the Germans take him prisoner, and tell them his connections in Germany, when it would fix it up all right, and that the Germans would take him without any harm.

Witness further testified that he did not know what talk there had been about his connections in Germany, other than that stated; that the connections referred to were his wife's people, she being a girl of German descent, and having relatives living in Germany, some of whom were farmers; that he, the witness, did not know who opened the conversation, or how it came up, or what else was said; that Von Borstel was present at the time, and might have entered into the discussion, but that witness did not know whether he did or not; that he had been married only since the February prior to the conversation referred to, and had been giving some thought to the probability of his service in the army, that being the big question before him at that time. Witness denied that he was thinking more about the subject of his service in the army than any other one thing, stating that it didn't bother him much, and that he had not thought a great deal about it, and that if he had to go, he had to go, and that was all. Asked if he wanted to go, witness stated that "it didn't make any difference only that I was married. I kind of hate to leave my wife. If I was single I would have wanted to go." The witness further testified as follows: [52]

(Testimony of Corliss B. Andrews.)

Q. You hadn't made any effort to enlist prior to that time, had you? A. No, sir.

Q. And isn't it true, Andrews, that you met him there on that occasion seeking advice as to what you should do if you should be taken prisoner over there in France? A. No, sir.

Q. And that what the old man told you was that, if that should happen, he had read that the German army worked their prisoners on German farms, and that, if you should tell your captors that your wife had relatives there who were farming, they might send you to the farm of her relatives, and make it perhaps a little easier for you?

A. That is not the words, as I remember it, no.

Q. Isn't that in substance what he told you?

A. Not in substance, no. I told you what it was.

Q. Well, wasn't there something to that effect said? A. Not in that way.

Q. Wasn't there some discussion about your wife having relatives over there?

A. In the way that I told you before.

Q. Now, you say he told you if you got in a pinch?

A. Yes, sir, tight place.

Q. In a tight place, to do what?

A. Throw up my hands and let the Germans take me prisoner.

Q. Did he ever tell you, Andrews, when you got over in France to desert? A. I don't believe so.

Q. He never did? A. I don't think so.

Q. And the only thing he told you, was that, if you got in a tight place— A. In a battle, yes.

(Testimony of Corliss B. Andrews.)

Q. You understood by that, that he meant where escape was impossible?

A. No, I didn't take it that way, because I told him that, if I saw anybody else do that, that I would shoot him in the back, and would expect him to do the same with me.

Q. You argued the question with him, then?

A. Yes, sir. [53]

Q. Disagreed with him? A. Yes, sir.

Q. Didn't accept his recommendations?

A. No, sir.

Q. As a matter of fact, had you taken the same attitude in discussions at previous times that you had on war questions? A. No, not altogether.

Q. Did you also argue those questions with him?

A. Not at the start, no.

Q. Well, after we got into the war, did you?

A. I believe after we were in the war, yes.

Q. You didn't believe what he told you?

A. Not after we got in the war a while.

Q. And why was it you said you didn't enlist?

A. I was in the draft. I couldn't enlist.

Q. Did you say it was because of your wife, you didn't want to leave your wife, that you hadn't enlisted? A. Not necessarily.

Q. Well, was that the reason, or was it not?

A. I didn't like to leave my wife, no.

Q. And is it not true, Andrews, that you had no intention of enlisting in the army at any time?

A. Not at that time.

Q. Well, at any time?

(Testimony of Corliss B. Andrews.)

A. Not unless I had been single.

Q. Well, you were not single at any time when we were in the war, were you? A. No, sir.

Q. Then you had no intention of enlisting at any time? A. No, sir.

Q. And nothing the old man may have said to you, then, at any time, in any manner, prevented your enlistment. A. I don't believe so. [54]

Q. Well, don't you know that that is the fact?

COURT.—He has already answered the question. He says he doesn't think so. That answers the question.

Q. Now, at that time, in this conversation you speak of where the old man and Von Borstel were present, you say the only thing you recall that was said was that statement that, if you got in a pinch, you should throw up your hands and tell the Germans about your family connections? A. Yes, sir.

Q. The old man didn't tell you, then, or at any other time, to desert, did he?

Mr. GOLDSTEIN.—Whom do you have reference to by "the old man"—Rhuberg or Von Borstel?

Mr. JOHNSON.—Rhuberg.

Mr. GOLDSTEIN.—Why don't you say Rhuberg? A. What was your question?

(Question read.)

A. No, sir.

Witness further testified that the next time he talked with defendant about war subjects was a week or so after, or it might have been a day after, at the Von Borstel house, Mr. Von Borstel and the women

(Testimony of Corliss B. Andrews.)

folks being also present; that he had come to be there in the same way as on the previous occasions; that he had not seen Rhuberg until he went into the house, and had gone in on the invitation, he believed, of Mr. Von Borstel, who was in the room at the time of the conversation had subsequently with Rhuberg; that witness and defendant had discussed war questions as before; that some of the things defendant said were that one German could lick ten Americans, that the United States was so slow that Germany would have us whipped before we got ready, and that moneyed men had caused the war; that he didn't know just how the conversation started; that he, the witness, was not worrying about having to go into the service; that the conversation had taken place in the kitchen—dining-room of the Von Borstel [55] house, in the presence of Von Borstel, and some of the women; that witness did not recall whether he had more than two talks with defendant; that Von Borstel was present at the time of the two conversations at the Von Borstel house, and was usually present when these conversations were had; that witness did not recall having had any other talks with defendant during the fall of 1917.

The witness further testified as follows:

Q. Now, when Rhuberg made these statements on this second occasion there at the Von Borstel house, did you debate them with him? A. Yes, sir.

Q. You didn't agree with him? A. No, sir.

Q. And didn't believe what he said? A. No, sir.

Q. And it was not anything that he said on either

(Testimony of Corliss B. Andrews.)

of those two occasions which has kept you out of the army? A. No, sir.

Q. You were not influenced in any respect by any statement he made after the United States got into the war? Is that correct?

Mr. GOLDSTEIN.—I don't like to object any more than counsel does, but this continuous repetition and reiteration of the same thing, covered at least five different times, as to why he had not enlisted and why he is subject to draft, and the effect upon him, I think, is amply covered and answered. There is no other purpose than merely to sort of humiliate the witness, as far as I can see; to rather insult him; but as far as the facts are concerned, it has been disclosed to counsel time and time again. I think there ought to be a stop to it.

COURT.—I think the question has been answered two or three times.

Mr. JOHNSON.—I would like to have an answer to this question.

COURT.—After he has answered the question, I don't see how you can make it any more emphatic. It only takes up time and doesn't get any result.

Mr. JOHNSON.—My impression is that this particular question has not been answered. I asked him the same question as to particular conversations, but I didn't ask him the general question.

COURT.—He may answer that question. [56]

(Question read.)

A. Not later on, no; I don't remember of any.

Witness further testified that he had been and

(Testimony of Corliss B. Andrews.)

was trying to get money enough together to get a farming outfit and start farming for himself; that something had been said in a joking way out at the Mackin ranch the winter he was there about defendant lending him \$1,000.00 for that purpose, but that defendant was not very enthusiastic about lending the money.

Witness further testified that the only times he ever talked with defendant was at defendant's place of business.

Witness was thereupon excused.

Testimony of Luther Davis, for the Government.

The Government, to further substantiate the issues on its part, called as a witness LUTHER DAVIS, who, being duly sworn, testified that he lived in Kent, Oregon, was twenty-two years of age, was born in Mountain City, Tennessee, had come to Oregon when he was sixteen years of age, and had lived and farmed as a renter in Kent five years; that he had married on the 28th day of October, 1916, before the draft law went into effect; that he had registered in June of 1917, and had been classified, and was not subject to call; that he was subject to call and had the same position as everyone else until the last classification; that he had known defendant about three years, having first met him at the Van Borstel home; that the first discussion witness had with defendant concerning war topics was early in the spring of 1917, before the United States went into the war, and was had at the home of witness; that defendant was going to or returning from Kent and stopped in and had

(Testimony of Luther Davis.)

dinner with witness and his wife, where the conversation took place. The following proceedings were then had:

Q. Just tell the Court and jury what was said by Mr. Rhuberg.

Mr. JOHNSON.—Just a minute, Mr. Davis, please. I want to interpose the same objection to this testimony that was offered concerning any testimony concerning statements made prior to our entry into the war, for the same reasons that were before stated.

(The objection referred to by counsel for defendant having been [57] interposed by counsel for defendant to question put to the witness Andrews upon his direct examination, and calling for statements made and conversations had with the defendant upon war topics prior to the entry of the United States into the war, and stated as follows: "If your Honor please, while I have no desire to keep out any evidence that might properly be in this case, it seems to me that the evidence of any statements this man made should be confined to a time subsequent to the entry of the United States into the war. Your Honor knows that prior to that time there were many Germans, or men of German birth in the United States whose sympathies were with Germany, but who to-day are just as good citizens and just as loyal Americans as any citizens we have in the United States, and it seems to me that this line of questioning is designed to place this defendant in an unfavorable light with the jury and give to any statements he may have made subsequent to the war a weight

(Testimony of Luther Davis.)

to which they are not entitled. There is every reason to believe that there was, and properly should be, a marked change of sympathy, change of opinion, subsequent to the entry of our country into the war, and on that account I feel it my duty to the defendant to interpose an objection to this character of testimony as it may be called for throughout the trial as incompetent and irrelevant, and having no proper place in the trial of this particular offense." And the court ruling as follows: "This tends to show the trend of the defendant's mind and his disposition towards this Government. I think it is proper. The objection will be overruled.")

COURT.—Very well, the objection will be overruled, and exception allowed.

Q. Just go ahead and tell what took place.

Witness then testified that defendant could get no letters from his wife in Germany because of the censor, and blamed the English for that; defendant saying that the English got ammunition from Americans, and Germany couldn't get anything, that we were sending ammunition to kill the Germans with and had no business doing that; that the United States had no business interfering with the allies, and that we never had been neutral; that Germany was a fine country, far superior to the United States; that you had more freedom, could get anything you wanted there whiskey, or wines, or anything you wanted; that you couldn't get anything you wanted here any more.

Witness further testified that defendant told him

(Testimony of Luther Davis.)

that he had been in the German army about three years, and had been in the Franco-Prussian war; that the training of the German army was far superior to the American army; that he was in the German cavalry training and told what a fine horse he had, and what fine training he went through; that defendant told him of Mr. Von Borstel seeing some American troops in The Dalles, and that they handled a gun like a kid would; that defendant stated to him that Germany was perfectly right [58] in sinking the Lusitania, that ships carrying contraband of war, with passengers on them who had no more sense than to ride in time of war, ought to be sunk; that if this country got into the war Germans in this country would rebel against this Government; that this country was in no shape to fight the German Government, that we were so slow that Germany would have the Allies licked before we got ready to fight, and then come to the United States.

Questioned as to whether all these statements were made prior to our entrance into the war, witness testified that the talk about troops in The Dalles took place along in harvest, about August; that the remarks about the Lusitania, about what a fine country Germany was, and about the militarism there was all prior to the entrance of the United States into the war.

Witness further testified that defendant said that Germany was in the right and she was bound to win; that the German government always took the right

(Testimony of Luther Davis.)

side to everything; that they never had lost a war, and they never would.

Witness further testified that the first discussion he had had with defendant after the United States entered the war was at the Mackin place, at the home of defendant, where witness had gone with his wife after some vegetables, in November of 1917; that they had gone into the front room of the Mackin house where they saw on the wall the Kaiser's picture and one German flag; that there was a little boat on the table under the German flag and the Kaiser's picture, which had three American flags on it. Questioned as to what conversation took place at that time, witness testified that defendant was telling about fighting in the Franco-Prussian war and what a fine army Germany had; that we had no business in the war, had no call whatever to be into the war; that the moneyed men, and men of the shipping interests, and men around these big steel factories in the East making munitions were the men that had brought us into the war; defendant speaking of the sale of liberty bonds told witness that he wouldn't advise any man that didn't have a [59] surplus amount of money to invest in Liberty bonds, for in a couple of years they would go down—they probably wouldn't be worth 25% under par; that he would advise me not to enlist, not to get into the army until after I was drafted; that if a bullet didn't kill me I would die of sickness on account of so many dead people; that defendant knew that witness had registered and was subject to draft; that the effect

(Testimony of Luther Davis.)

of these conversations prior to the war upon witness was to cause him to begin to think Germany was in the right, that the United States was not neutral in sending ammunition to the Allies, and that the sinking of the *Lusitania* was justifiable. The following proceedings were then had:

Q. Now, what effect did the conversations of Rhu-berg have with you subsequent to our entrance into the war?

A. It didn't have much of any, that didn't.

Q. What was the reason of the change?

A. Well, other people talked to me, different people around. I quit visiting Borstels, and other people got talking to me, and I got it out of my head; it put me to thinking.

Answering a question of the Court, witness testified that defendant appeared to be very much in earnest at the time of his last conversation with him about the war, and appeared to try to impress upon the witness what he said.

Upon cross-examination, witness testified that his first conversations with defendant referred to in his testimony had occurred at the home of witness, which was situated on the main road about half way between the Mackin ranch and Kent; that his wife was a daughter of one of the old German families there; that he didn't know whether his wife was acquainted with the wife of defendant, but that he had heard her talk to defendant about his wife; that defendant frequently passed by his home, would come in, and get to talking, and that often witness invited

(Testimony of Luther Davis.)

him in to dinner; that he often stopped in to 'phone over to the Mackin ranch or to Van Borstel's ranch; that the statements made by defendant prior to the war bearing upon the subject of the war usually started through some statement or [60] inquiry relative to his difficulty in hearing from his wife.

Witness further testified that he had never heard defendant claim any of the flags in the Mackin house, but had heard defendant say "that a Wiley kid brought them there, gave them to Tuffy, or something like that"; that they were all little cotton flags, which may have come in boxes of cigarettes; that witness remembered seeing a little American flag on the bedroom door, about the same size as the German flag above mentioned, witness likewise identifying a Yale Pennant and a flag of New Zealand as a part of the wall decorations of the front room of the Mackin house; that defendant had never told him the flags were his, or called the attention of witness to them in any way; that defendant had never advised him to desert in event he had to go into the army; that defendant had told witness of losses his family had sustained in the purchase of German bonds, which had depreciated $33\frac{1}{3}\%$, and advised witness against buying Liberty Bonds unless he had a surplus amount of money, telling him that they would go down 25%, and that there would be a couple of years that the Government would furnish money to keep them up.

Witness further testified that ten days or two weeks before the last trial of this case defendant had stopped in to 'phone to Von Borstel, and wit-

(Testimony of Luther Davis.)

ness had invited him to stay to dinner. The following proceedings were then had:

Q. Now, these statements that he made to you that you speak of, after we came into the war, they didn't influence you in any way, or deter you from enlistment, did they?

A. No, sir, they didn't keep me from enlisting, but still it made me feel bad.

Q. You hadn't intended or expected to enlist, had you? A. No, sir.

Q. Nothing he said influenced you in the matter, or changed your intentions in any way as regards going into the service?

A. Well, if I hadn't been married, it probably would have. [61]

Q. But you were married? A. I was, yes.

Q. And had no intention of going until you had to?

A. No, sir.

Q. The only reason you didn't go was because of your wife and your baby? A. Yes, sir.

Q. (Redirect.) How old is the baby?

A. Eleven months old.

Witness was thereupon excused.

Testimony of Mrs. Luther Davis, for the Government.

The Government, to further substantiate the issues on its part, called as a witness Mrs. LUTHER DAVIS, who, being duly sworn, testified that she was the wife of Luther Davis, the witness last above mentioned; that they had been married a year ago last October, and had one child, eleven months of age; that her maiden name was Emma Schassen;

(Testimony of Mrs. Luther Davis.)

that she had been born in the United States, of German parents; that she had known defendant a good many years ago when he lived on his homestead about nine miles west of Kent, and before he left for Germany in 1904, and had met him again when he returned from Germany in 1913; that she had had a conversation with defendant in the summer of 1917, her husband being likewise present, and that defendant was telling her husband not to enlist, because if he would enlist, if he didn't get killed by the German bullets he would by some disease, that anybody that would ride on the Lusitania while the war was going on and it was carrying ammunition ought to be killed, that it was the rich people that were causing this war, and that he, the defendant, was going back to Germany just as quick as the war was over, that he wanted to go back where his wife was, that he didn't like America, and was going back to Germany to live; that America was responsible for not getting his mail through, and that defendant appeared to be embittered against this country. Witness further testified that these conversations occurred in the summer and fall of 1917, between defendant and her husband, and that she [62] had no feeling of animosity toward defendant.

Upon cross-examination witness testified that she had known the wife of defendant about all the time that she lived out here before she moved back to Germany, had been quite friendly with her; that defendant had had dinner at her home several times; that defendant was very much annoyed because he

(Testimony of Mrs. Luther Davis.)

hadn't been able to hear from his wife in Germany, that on the occasion of his calls at the Davis home witness would inquire concerning his wife. Whereupon the following proceedings were had:

Q. And his chief complaint, Mrs. Davis, was because he hadn't been able to get mail from there or get mail to her; isn't that true? A. Yes, sir.

Q. Your husband had made no effort to enlist at any time, had he? A. My husband?

Q. Yes. A. No, sir.

Witness was thereupon excused. [63]

Testimony of Ray Sproul, for the Government.

The Government thereupon, to further substantiate the issues on its part, called as a witness RAY SPROUL, who being duly sworn, testified that he lived at Kent, Sherman County, Oregon, where for the past five years he had been engaged in farming a rented farm in connection with a homestead upon which he had not yet proved up; that the ranch upon which the witness lives is distant about three miles from the Mackin ranch, where the defendant Rhu-berg resided; that witness had known defendant for about three years; that witness is thirty-four years of age, was born in Nebraska, but had lived in the states of Oregon and Washington most of his life, and had lived in and about the town of Kent for about five years.

The witness further testified that either the last of October or the first of November of 1917, he had had a conversation with defendant upon subjects re-

(Testimony of Ray Sproul.)

lating to the war, the conversation occurring after the United States had entered the war, and taking place along a fence then being repaired. The witness was then asked how the conversation happened to take place and answered:

A. Well, I got a stack of straw from Charley Owens, I traded for some hay, and this was on Borstel's place. And when I got the straw Charley Owens told me I could not pull it out, after it got wet, over the ground, unless it froze up. Well, it had rained a little, but not very much, so I stopped and asked the boys if I could haul it out, and they said yes. So we went ahead talking a little while, and I made the remark they were certainly blowing things up in Europe. The boys said, yes. Mr. Rhuberg, he says, "That is just what the Germans want." "Why," I says, "I should think it would make food short over there." "Well," he says, "It is all on French and English ground." And I says, "Well, that will probably change when the American soldiers gets over there." And he says, "No. No," he says, "they will never step foot on German soil. One German is equal to a dozen Americans."

Q. What did you say in response to that?

A. I says, "We will see."

Q. Is that the sum and substance of the conversation? [64] A. That was all.

Q. Did you ever talk with him after that, or have any conversation? A. No, sir.

Q. You were through with him? A. Yes, sir.

Upon cross-examination the witness testified that

(Testimony of Ray Sproul.)

on the occasion of the conversation with defendant just related, four persons were present, namely, the defendant Rhuberg, Frank Von Borstel, Emanuel Von Borstel, the latter called "Tuffy," and the witness; that the Von Borstel boys, while present and within hearing, took no part in the conversation; that defendant and the Von Borstel boys were working upon one of the Von Borstel fences along the line of a part of the Von Borstel land, the defendant at that particular time sitting upon a wagon loaded with fence posts; that witness came up to where the men were working while driving with his buggy to Kent, and that the defendant had not gone out to look the witness up.

The witness further testified that the only statements made to him by defendant at that time were those related by him upon his direct examination, and that defendant had not stated to witness that the moneyed men had caused the United States to enter the war against Germany and had not stated to the witness that Germany was in the right and the United States was in the wrong, and that defendant had not stated to witness that the Liberty Bonds would soon be sold for twenty-five cents on the dollar, and that he, the witness, had never at any time said that defendant had made those statements to him.

Questioned as to what business he had followed, other than farming, witness testified that he had worked in [65] the lumber business and farming, witness denying that he had at any time run a saloon or worked in one, the witness further stating that

(Testimony of Ray Sproul.)

the occasion related was the first time he had ever met the defendant to talk to him, and that he, the witness, had started the talk on that occasion by his remark to the boys that they were blowing things up pretty much over there.

The witness thereupon testified as follows:

Q. Mr. Sproul, I forgot to ask you whether or not this talk that you had with Rhuberg that you testified concerning operated to prevent you in any way from entering the military service?

A. Why, sure not.

Q. Beg pardon. A. Certainly it did not.

Q. You are a man of family? A. Yes, sir.

Q. And at that time that you talked with the defendant, or prior to that time, you had no intention of enlisting in the army? A. No, sir.

Q. Or the Naval service? A. No, sir.

Q. You didn't pay any attention to what he said, did you?

A. No, sir. It had no effect on me, because I knew better.

The witness was thereupon excused.

Testimony of William Mitchell, for the Government.

The Government, to further substantiate the issues on its part, called as a witness WILLIAM MITCHELL, who being duly sworn, testified that he lived at Kent, Sherman County, Oregon, where he had resided for about five years; that he was born in Michigan, but had been in the state of Oregon for about seventeen years, residing in Portland, Oregon,

(Testimony of William Mitchell.)

Vancouver, Washington, and San Francisco, California, prior to coming to [66] Kent; that his business is farming, he operating a rented farm and a homestead which joins the Mackin ranch; that he has known the defendant Rhuberg for about two years or a little more, having first met him two years ago last harvest.

Witness further testified that he thought he knew how the defendant feels about the war between the United States and Germany, having talked to defendant in June of 1917; that on the occasion of the conversation referred to defendant was either loading or unloading rock along the road, witness going over across the road to where defendant was working for a drink of water; that defendant stated to him that if they were in Germany they would not have to drink old water, but would have a jug of beer, and that thereupon the talk about the war started.

Questioned as to just what defendant said about the war, witness stated that defendant said to him that this country had no business in the war against Germany, it was not our war, the working people's war, it was the rich man's war, and that they would be helpless anyway, and that before we could do any good the West front would be taken and the French and English whipped; that it would take ten Americans to stand off one German and that we were wrong in entering the war, as it was not our fight; that the rich men had caused the war, and it was not our war; that the conversation in question took place after war was declared between the United

(Testimony of William Mitchell.)

States and Germany, and witness thought in the first part of June of 1917.

Upon cross-examination, and concerning the time of the conversation referred to, the witness testified as follows:

Q. The first part of June?

A. I think so; the first part of June; somewhere between the 5th and 20th, anyway; somewhere along there. [67]

Q. You think it was the first half of the month?

A. Well, I think it was along about the 9th or 10th of the month, or 11th. It was two or three different days there.

Q. You think it was before the 15th?

A. Yes, I think it was; but I am not sure, though.

Q. Was Luther Davis present at that talk?

A. No, sir.

Q. Did you ever have any conversation with the defendant on subjects of the war, except that one you speak of?

A. None, not to speak of, except that one.

Q. You never did have any conversation with the defendant at which Luther Davis was present?

A. No, sir.

Q. Did you ever state to the grand jury or to the district attorney that you had? A. No, sir.

Q. This indictment charges that certain statements were made by this defendant in the presence of yourself and Luther Davis.

A. It is a mistake.

Q. Is that a fact? A. No, sir, it is a mistake.

(Testimony of William Mitchell.)

The witness further testified that on the occasion of the conversation related defendant was working upon the Von Borstel lands and prior to that time had been living at the Mackin ranch, which witness supposed was owned by Von Borstel; that he went over to where defendant was to help defendant load or unload two or three large rocks; that witness had been working just across the road from defendant's place of employment, and that he had come to where defendant was employed, and that defendant had not come to him.

The witness further testified as follows: [68]

Q. What did you say your age was?

A. 34 or 35. I think 34.

Q. Married man? A. Yes, sir.

Q. Family? A. Yes, sir.

Q. How many children? A. Four.

Q. Youngsters? A. How?

Q. All young children?

A. Yes, sir. The oldest one is 10 years old.

Q. You are outside the draft age? A. Yes, sir.

Q. Were when the draft law was passed?

A. Yes, sir.

Q. Is it because of your wife and children that you have not enlisted?

A. Well, I expect that is one thing that has kept me from enlisting.

Q. It wasn't anything the old man said to you that has kept you from enlisting?

A. I haven't ever thought anything about enlisting, on account of my family.

(Testimony of William Mitchell.)

Q. Isn't it a fact you didn't pay any attention to what he said?

A. No, I didn't pay any attention, any more than I would anybody else's talk. I am an American citizen. This is my government.

The witness further testified that the purpose he had in mind in going over to the place of employment of the defendant was to get a drink of water, having no water with him, and being very thirsty.

The witness was thereupon excused. [69]

Testimony of Trueblood Smith, for the Government.

The Government, to further sustain the issues upon its part, called as a witness TRUEBLOOD SMITH, who, being duly sworn, testified that he lived in Moro, the county seat of Sherman county, Oregon, and distant twenty-five or twenty-eight miles from Kent, Oregon; that he is the pastor of the First Presbyterian church at Moro, and had been in charge of that church since May 16, 1917; that the only time he ever met the defendant Rhuberg was on June 20, 1917, at the Mackin ranch, some four or five miles southwest of Kent, where he had gone with one Bourhill; that Bourhill was then engaged in the organization of a bank in Moro, known as the Farmers State Bank, and of which he, Bourhill, is now cashier, Bourhill asking witness to accompany him for companionship, and incidentally that they might attend the Red Cross meeting held in Kent on that date.

The witness further testified that they first went

(Testimony of Trueblood Smith.)

to Grass Valley, where they stopped for a few minutes, then went to several ranches in that vicinity to see stockholders in the new bank, leaving the Sam Holmes place in time to get to the meeting held in the school house at Kent, referred to; that on the day in question witness was wearing upon his sleeve a Red Cross arm band made of a red cross of cloth sewed upon a white cloth field, which was still upon his sleeve at the time he met and talked with defendant.

The witness further testified as follows:

Q. What conversation, if any, did you have with Mr. Rhuberg at that particular occasion?

A. The conversation started—when we drove up, Mr. Bourhill drove his auto into the barn lot of this Mackin ranch, which is owned, or at least controlled, by Mr. Von Borstel; and when we drove up into the lot, Mr. Rhuberg was in the barn lot. Mr. Bourhill asked him if Mr. Von Borstel was at the house, or at the place, I believe he said he was at the house at that time, I believe just a short distance [70] from the barn. Mr. Bourhill introduced me to Mr. Rhuberg, and then he started to the house; asked me if I would come with him. I said, “No, I will just stay here, and talk with Mr. Rhuberg while you are at the house.” I knew his business was nothing that concerned me at all, or the Red Cross. So, as I say, he did introduce us, and I said I would stay there. Mr. Rhuberg asked—looking at the red cross—“What is this for?” or something. I said, “Oh, this is”—looking at my sleeve, I said, “We are

(Testimony of Trueblood Smith.)

solicitors for the American Red Cross." "Well," he said, "if Mr. Bourhill asks him he will get no contribution from Mr. Von Borstel for the American Red Cross Society." I says, "That is not his business at all. This is out of our territory. We are solicitors for the Moro district." Then Mr. Rhuberg made several statements concerning our relations with Germany; one of them in which he stated that we had no reason whatever for going to war with Germany; and of course at once I asked him concerning the sinking of the Lusitania. I believe that is the only one I mentioned. He said the Germans sank that vessel and others because they were lending aid to the enemies of Germany, and that we had no right at all to go in; no cause to declare war against Germany. He said, "The trouble with the United States is this Government will not permit its people or the papers to publish the truth concerning Germany. If so, the American people would not fight Germany; if they knew the truth concerning Germany."

Q. What did he say with respect to the funds for the Red Cross, as to the necessity of the Government?

A. Well, one of the first questions was, when he said "What are you folks out here for? Do you wish funds for the American Red Cross?" He says, "You have no wounded soldiers." He says, "I support the German Red Cross Society, for we have many wounded soldiers, and need for funds."

(Testimony of Trueblood Smith.)

Q. Did you know at that time he was an American citizen?

A. Whether I knew it just at that time, he told me there just before, or in that same conversation, he told me that he was a naturalized American citizen; and incidentally he told me also that his wife was then living in Germany.

Q. Did he use the word "You" have no wounded?

A. That is, those were the words that I remember was, "Why do you wish funds for the American Red Cross Society, for you have no wounded soldiers."

Q. And he said "We" have wounded?

A. He says, "We have many wounded soldiers, and need for funds." He said, "I support the German Red Cross Society." [71]

Q. What did he say, if anything, with respect to the feeling of Germany against America?

A. He said in just these words, the exact words—at least that is the thought—he says, "The feeling in Germany is very bitter towards the United States for her going into the war against Germany." It was in that connection he says, "We"—the United States, meaning—"We have no cause to go to war with Germany, for Germany had only destroyed the vessels that were giving aid to the enemies of Germany."

On cross-examination the witness further testified:

Q. He said "We" had no cause?

A. He said we had no cause.

Q. To go into the war—is that correct?

(Testimony of Trueblood Smith.)

A. By that I didn't mean those were his exact words. The thought was, whether he said, "The United States has no cause. The "we"—I put the word "We" myself. I won't say Mr. Rhuberg said "we" had no cause; but the thought was the United States has no cause for entering into this war with Germany.

Q. What were his exact words?

A. As I said, I didn't make any note of them at all, except the thought he expressed was that we, the United States—whether he said "we" or whether he said "United States"—had no cause to go to war with Germany, I won't say.

Q. Did you make any note of these other statements that you attempt now to give?

A. Do you mean write them down at the time? I certainly wrote nothing down at the time at all.

Q. You have attempted to give the jury a verbatim statement of some of his other words, haven't you?

A. In the same sense I remember the one statement—I remember the exact words, that very terse, short statement—let me give these two statements I verify: these are the way they were given to me: He says, "The feeling in Germany is very bitter towards the United States for going into this war with Germany." Another one was, he said, "It would be very difficult for me to return to Germany at the present time." Those were his exact words. But whether he said "We" had no cause to go to war with Germany, or whether he said the "United

(Testimony of Trueblood Smith.)

States'' had no cause, I won't say.

Q. This conversation you had with him was the only conversation you have ever had?

A. The only conversation I ever had with Mr. Rhuberg. [72]

Q. That was had upon his place of residence?

A. It was, as I said, on the ranch—the Mackin ranch, which is owned or controlled by Mr. Von Borstel.

Q. Did you understand that that was the place of residence of the defendant?

A. I have heard it since, that he stays with Mr. Von Borstel. I don't know. I didn't know it was permanent at all. I know that is where he was on that afternoon. I think Mr. Bourhill told me—I asked him if he was working for him—if he had rented that place. Mr. Bourhill informed me that he thought he was staying with Mr. Von Borstel, whether as hired man or whether he was staying there for his board or not, I knew nothing of the relation.

Q. He was working out around the barn when you went there?

A. I took that for granted, for he was in his working overalls, if I remember correctly. But at the time I saw him he was doing no work at that time. I understood he was helping Mr. Von Borstel on the ranch.

Q. Is that the time you mistook one of the stallions for a mare, or vice versa?

A. If I ever did, that must have been the time.

(Testimony of Trueblood Smith.)

Q. Well, did you?

A. Not to my knowledge. I think I know the difference, having spent some thirty years on a farm.

Q. Now, you have taken a very active interest in this case, have you not?

A. I would rather you would put that clearer.

Q. Well, have you not stated from time to time that you would like to see the old man convicted, or words to that effect?

A. I think I have made that statement; that I thought he deserved conviction.

Q. And you would like to see him convicted?

A. If the evidence is sufficient, I certainly should like to see him convicted; truly.

Q. How old are you? A. 36 March 7, 1918.

Q. Did anything that the old man said to you that day or any other time—

Mr. GOLDSTEIN.—You mean Mr. Rhuberg?
[73]

Q. The defendant—influence you in any way against enlistment in the army or navy?

A. Why, no, I cannot say that it did, for I knew I was physically incapable of bearing arms, and I knew I was past the age for the draft; couldn't have been accepted if I had applied.

Q. You had no intention, at that time or at any time theretofore, of enlisting in the army or navy?

A. Not in the army or navy, no. The Y. M. C. A. work has appealed to me; but I have made no application even for that, so his words did not influence me against enlistment in the army.

(Testimony of Trueblood Smith.)

Q. You paid no attention to them, as far as that is concerned?

A. I paid no attention, as far as I was concerned; but, as a minister of the Gospel, and one who was expected to take an active interest in the things that were for the welfare of the United States, it certainly did affect me in that way, and I was much surprised that a man of his intelligence would be guilty of speaking upon a first meeting to any one such words as he gave.

Q. Did you make any effort at that time, Mr. Smith, to show the man the error of his way?

A. I think I made nothing—except I tried to talk to him concerning calves, and not stallions or mares. He had some very nice calves there. In fact, I tried to get him to talk concerning the stock rather than the subject he was talking upon.

Whereupon the Government rested.

Thereupon the defendant moved for a directed verdict of not guilty in connection with which proceedings were had as follows:

Mr. JOHNSON.—I desire to move the court for a directed verdict upon Count 1 of the indictment, for the reason there is no evidence here of an attempt to cause insubordination, or disloyalty, or refusal of duty in the military forces of the United States;

For the same verdict upon Counts 2 and 4 of the indictment, for the reason that there is no evidence here showing in any degree, or any evidence from which the jury may conclude in any degree, any injury to the recruiting or enlistment service of the

United States, or to the United States.

COURT.—That is in effect the motion you made before? (The motion referred to as “made before” having been made in the first trial of the cause, which resulted in a disagreement [74] of the jury and a mistrial as to Counts 1, 2 and 4 of the indictment, Count 3 of the indictment having been dismissed by the Government upon the statement of the Court that an instruction would be given the jury to acquit upon that count.)

Mr. JOHNSON.—Yes. There is one other ground that I want to predicate the motion on as concerns the fourth count of the indictment, and that is the fact that there is a variance between the charge and the proof. The charge is that on a date which is not stated, but some time between the first day of June, 1917, and the first day of January, 1918, certain statements in that count of the indictment set forth were made in the presence of Mitchell and Davis. The evidence of the Government expressly negatives those facts, as there was no statement made in the presence of these two men, either among those set out in the indictment or otherwise; and on that ground I ask that we have the same ruling on the fourth count that we have asked for on the first and second.

It likewise appears from the statements of Mr. Mitchell that any statements made to him were made before the law under which this man is being tried became effective. He stated, as your Honor will remember, that, as nearly as he can recall, the statements were made to him the 9th or 10th, per-

haps the 11th of June, prior to the date when this law was passed.

COURT.—The motions will be overruled.

Mr. JOHNSON.—We save an exception.

Mr. SCHMITT.—Both motions are overruled?

COURT.—Yes.

Mr. SCHMITT.—And exceptions to both.

COURT.—Very well.

Mr. JOHNSON.—Count 3, I understand, is not involved in this suit?

Mr. GOLDSTEIN.—I abandoned count 3 before, and dismissed it, so it is out. We only have counts 1, 2 and 4.

COURT.—Count 3 is dismissed?

Mr. GOLDSTEIN.—Count 3 is dismissed. [75]

WHEREUPON the defendant, to substantiate and sustain the issues upon his part and his plea of not guilty, became a witness in his own behalf, and being duly sworn, testified as follows:

Testimony of Julius Rhuberg, in His Own Behalf.

Questions by Mr. Johnson:

Mr. Rhuberg.—You are the defendant in this case?

A. Yes, sir.

Q. What is your age?

A. I will be 57 in August.

Q. When were you born, if you know?

A. The 20th of August, 1861.

Q. And where were you born?

A. In Schleswig-Holstein, in a town named Pinneberg.

(Testimony of Julius Rhuberg.)

Q. Do you know under the rule of what country Schleswig-Holstein was at the time of your birth?

A. It was under Danish rule. The King of Denmark was the dictator of Schleswig-Holstein. 1864 to 1866 we had war against Germany and Austria; then we became a Prussian province after 1866.

Q. From 1866 on, where did you reside?

A. I stayed home. I stayed home till 1873. Then I went to Hamburg. Hamburg is a free city—republic. I went there to school. After my schooling, I went then to Hamburg, in the merchandise business, as an apprentice I stayed in this business work a year for my father. My father was merchant. Till I had to go to the army, and I served three years in the Prussian army, the German army. And as soon as I got through my army service, it always was my wish to become a farmer, but my father was [76] against it. And I had an uncle living in Nevada. He settled in 1852 in Southern Nevada. And I like to go then. So I went in 1884, early, in the spring, I went over to Nevada. I stayed two years.

Q. Where did you go? Where in Nevada did you go?

A. In Nye County; Fish Lake Valley. He came out in 1848 to Nevada, and settled on his place in 1852.

Q. What sort of ranch was it?

A. It was stock ranch.

Q. How long did you remain there in Nevada?

A. We stayed—after I was a year there, then I

(Testimony of Julius Rhuberg.)

helped him—he bought a place out of Los Angeles, and I helped him drive down a bunch of horses. We was 24 days on the road. And I stayed awhile in that place in Los Angeles, but I didn't like that; it was too hot in farm work. So I went back on the ranch in Nevada. In 1886 I came up here to Oregon, and met a man who gave me work, and I worked one year with sheep—herded sheep.

Q. What were you doing with the sheep?

A. That year, in the winter time, we camped out all winter, and herding and packing them both. Next year we went up—in 1888 or 1889 we went up to Big Bend country with our sheep. We took them sheep on shares, the herder and I. We went up to Big Bend country, in that hard winter, and we did, in one way we lost 800 head, and had a big hay bill to pay; so that the first year what I made, I lost it all again. We went back to Oregon. We thought Oregon was, after all, better sheep country as Big Bend country. And I worked with sheep till 1893. I took sheep on [77] shares; run sheep on shares myself.

Q. Whom were you working for?

A. For Charley Wiegand. He is old friend of mine. He is at present in San Diego, and he know me long years.

Q. How long did you work for Wiegand?

A. I worked one year, and then took the sheep on the shares. Afterwards I had sheep for another man named Seecamp.

Q. How long did you work for him?

(Testimony of Julius Rhuberg.)

A. Several years, up till 1883, I came back with sheep band. I worked in warehouse, for Mr. A. C. Hanson & Co.

Q. Do you mean 1883?

A. No, no, 1889 and 1890, after we lost those sheep, I was disgusted with sheep, and I worked awhile for Mr. A. C. Hanson. After all I went back to sheep again, and worked till 1893. Then in 1894 I lost nearly everything, and so I went over—I knowed a big sheep man, Mr. Hinton, when I got employment with them, I worked six years for Mr. Hinton. Then that time I took up my homestead there in Sherman County, and in 1900, late in the fall, I came out of the mountains, I told Mr. Hinton I had letters, I like to go and see my parents again. So I just came to Hamburg about Christmas time. And right after Christmas I got acquainted with my wife, and married in March, and in April, or in May, I brought her out here to Sherman County.

Q. What did you do when you got back to Sherman County?

A. I went out on to my ranch, and farmed it for myself.

Q. And where was your ranch? [78]

A. It was six miles west of Kent.

Q. What kind of a ranch was it?

A. Wheat ranch. 160 acres. I had 100 acres plowed of it.

Q. Was that the homestead you say you took up before you went back for this visit in 1899?

(Testimony of Julius Rhuberg.)

A. Yes, that was the homestead. In 1899 I went to Germany.

Q. Yes, I say, was this the homestead?

A. Yes, that was the homestead, yes.

Q. What kind of land was it when you took it up first, the homestead?

A. It was unimproved. It was bunch-grass and sage-brush. Some scabby. I had a whole lot of work on it. I fenced it, and it took me several years to get it in good working condition.

Q. What kind of buildings did you put on it, Rhuberg?

A. First I had a homestead cabin. I brought my wife out. I left her a few days in Moro, but in Moro—she was not able to speak English, and there wasn't a person she could speak to. I tried to fix up my house, but after a week I went down, and she told me she want to go back with me. After she seen my cabin, she feel discouraged, and cried. But I improved it a little, but she never got satisfied there.

Q. Had she ever lived on a ranch at any time?

A. No. My wife, she came out of same city where I am born. Her people lived close to my folks. Now, in them years that I was farming there, you see, we lived most of the time alone. Sometimes she was visiting the neighbors for a couple of hours. But all the time it was her craving [79] to go back to Germany. And I had not there very good show to branch out. There was no show for me to buy some other land that I could get a bigger place. Then in 1901 my father died. Then my brother, my youngest

(Testimony of Julius Rhuberg.)

brother, he got the business, and run the business up to 1903. Then he died. Then came letters from my mother. She didn't know what to do. She had trouble. And she asked me I shall come home. And my wife desired it. It was against my will. I like that free life in Eastern Oregon; I got used to it. When I came back to Germany I was short time there, I knew that I made a mistake, but I tried to please more my old mother. Then I came to Germany, I stayed a year, and it pretty near took me to straighten it out, our business, a little way. And I was compelled to take a place, for my relation had quite a little money in it, in Holstein. I took that place and farmed it. That was altogether different farming as we have in Eastern Oregon. I didn't understand it very well. And as soon as I can get out of it, that I satisfy my relation—it was the widows from my brothers; I had one brother, who was in Russia, he died; his wife was American lady—she was born in St. Louis; and it all depended on me—it all came to me that I had to straighten out this whole estate from my father. But in 1909 I got sick.

Q. When?

A. In 1909 I got sick. So I was glad that I can sell the place now, and even I made a little profit on it, and satisfied my relation. For I like this rough life—one day [80] in sheep camp—out every winter; we camped out every winter. I was full of rheumatisms. So we moved to Hamburg

(Testimony of Julius Rhuberg.)

after I sold that place. I lay for three months in bed.

Q. What was the matter?

A. Rheumatisms; nervous condition. So by degrees I got a little better. But I always talked to my wife "Oregon—Oregon." I thought when I come back to Oregon I will get well again. Then came 1911. 1912 I grewed a little better; I was able to walk on a stick. And my relation getting sore on my wife that she was satisfied that I can go, and she could not go along with me then, our affairs was not settled yet. We had some money in houses, or some money out in that farm I had. I could not draw the money out right away. So I just took traveling money, and come here. When I came back, for my health I went to Ashland, then came back here to my old home. And from that time, or right away, my old friend he begin talking to me what kind of place would be the best for me to buy. So I wrote to my wife. I had dear friend staying—I met him here in Portland. He was going to sell me a place. He knowed my circumstances. I told him, I say, "You know I don't have much money, but all the same, if you will sell me the place," I thought I would be able; and here in Portland I sent dispatch to my wife in Hamburg to send me money. I sent it off from here. And then, after all, that land I did not want. It was in Klickitat County, and I was not acquainted there; and the place was in such a shape that I did not like to take it. So I dropped it for awhile. [81] Then

(Testimony of Julius Rhuberg.)

I came here to Sherman County, and we always try to find a place for me. And I again now write to my wife. Then she was a little afraid. She wrote me, "You wasn't hardly able to walk, and now you want to tackle a farm again." But I told her in letters to those letters "It is time." Then the war interfered. Sometimes I write her, she didn't get my letter. Then I get a letter again. She didn't answer my questions. So I thought better wait till the war—till all this trouble is settled. Now, I have a nephew—he is a prisoner of war in England, and he wrote me occasionally a letter from England, and he told me he like—he is a farmer—he would like to come out here and farm with me. So is it my wish, is it my will, to stay here in Oregon and farm again. That is to say, that I like to go, after this war, go over right away to Germany, if I have to go, to settle it, if my wife don't can straighten it out, I have to go; but if she can, I like to save the family money, when even I go there to Europe. But I don't know how that will come out. Men tried to make out of me a disloyal citizen. When I took out my papers, I thought I was American. On every occasion, I believe I showed I was American. When I was these years in Germany, I never felt as German. I came there—had to buy the place in Holstein. I was not used to them ways back there. You know some people that certain men don't like to live along. I been brought up, my father told me to do my duty under all [82] circumstances; if I like it or don't, for to do my duty. As I took out my

(Testimony of Julius Rhuberg.)

papers, I know what I have to do; and I believe I did it to the best that I could. I have worked long years. And you men maybe don't know what it means to go in the mountains or stay in the winter-time out with the sheep. I stay out with blizzard, with worst weather, I stay with my stock, and safely keep them for my employer. As I did my duty to my employer, so I says I do my duty to this country.

Q. What do you mean, Rhuberg, by "packing" when you speak of working in the sheep?

A. A band of sheep, it belongs to two men, one man the herder, and the packer, as must have two pack-houses and a saddle horse. In years before, you see, packer in the mountains he had to rustle the range. I went up most of them years into the Blue Mountains, and went up as far as to the snow mountains. I took sheep up there one year two bands—I had management of the whole layout. Other years one band. And I came out of that. I respect other people's rights; but I want them to respect my rights, too. I never lost anything. I never had any trouble up there, what a man had, get sheep killed by herders and had shooting scraps; I got out of it. And just the same as I went to farmers, and brought out good stock in the fall. If I didn't be married, maybe I stay with Mr. Hinton my life.

Q. You say you went broke in 1893?

A. 1893. That winter I had sheep for Mr. Seecamp. I sold enough of them lambs for a dollar—you know what [83] that means, when there was

(Testimony of Julius Rhuberg.)

worth a dollar—after I covered all my debts what I had to pay, it was not very much left. So I was discouraged to start in again, and I went over to Wasco County to a man that know me, and know what kind of reputation I have as a working man, and he give me a job.

Q. Now, when you first came over to this country from Germany, did you bring any money with you?

A. Yes. My father paid all the expenses. As soon as I got here, he sent me \$500.

Q. When you came back from Germany with your wife in the spring of 1900—

A. 1900 I came home, and my father, after all, he begin talk a trip like that must cost me quite a little money, and when I get ready to start over here again, he went up to Hamburg, and he went to bank, and give me draft for \$1000 to pay my traveling expenses. That draft I cashed in Moro.

Q. Had you sold your homestead before you went back and got married?

A. No. I sold my homestead in 1904. When I went back and get my wife, 1900; 1900 I get married, in March.

Q. When you went back in 1899, did you expect to remain there, or to return to this country?

A. No, I left everything here. I left my farm here. I left all what I had here; just took along what I needed to pay my trip.

Q. Now, when you went back in 1904, did you sell your homestead at that time? [84]

(Testimony of Julius Rhuberg.)

A. Yes, sir, I sold it in 1904. For all what I got, with my implements, I got \$2,000.

Q. For your land and your implements?

A. From my land and my implements what I had.

Q. How much had you put into the place?

A. Just as much as I got out of it. You see, you fence it—posts are high.

COURT.—I don't think you need go into that.

Mr. JOHNSON.—The Government has made a point of it, your Honor, both in this case and the former case.

Mr. GOLDSTEIN.—There is nothing in the evidence at all of it, in the Government's case, that there is any issue raised at all on that point. I don't know what the purpose of it is. I didn't want to interrupt the gentleman.

Mr. JOHNSON.—If your Honor please, counsel for the Government in his opening statement made the statement that this man had come over here, and taken land from the Government, and taken citizenship,—

COURT.—He has already said that farm cost him more than he got out of it. What is the use of going into the detail of what he put onto his farm, or what he took off, and all that?

Mr. JOHNSON.—I just wanted to show where this \$20,000 came from that counsel spoke of in his opening statement.

Q. Did you have any children? A. No.

Q. You and your wife, by your marriage?

A. No.

(Testimony of Julius Rhuberg.)

Q. How far was your farm, your homestead there, from [85] your nearest neighbor?

A. From my nearest neighbor, it was maybe three-quarters of a mile.

Q. And how far to the next nearest place?

A. That was the one place where woman was; another place was bachelor, maybe the same distance he was there. Most of the time he was gone. Then two miles away, I think was a place, three miles away.

Q. And what was the attitude of your wife during the four years that you were living up there on the homestead?

A. My wife, she know very well that she made it hard for me; she made it hard for me. She know I like Oregon; I like farm life. And all the same, many times I catch her when she was crying; and she told me one day, "Shall I never see my folks again?" That weakened my heart. I could not keep her there.

Q. What was she crying about?

A. That she was so alone; she didn't like to stay on the place. Afterwards now she feels different. We are growing both older, and she thinks now, in the letters I got from her, that she thinks it is now her duty, in one way, to stay with me. I gave her her way; now, she says, the rest of my years what I have to live she will give me my way; and she is willing to come out.

Q. At the time you went back with her in 1904, what was your intention as to remaining in Germany

(Testimony of Julius Rhuberg.)

or returning to the United States?

A. My intention was—I was 40 days there, I know I was out of place. [86]

Q. 14 days where?

A. In Germany; I was again in my own country, everything was strange to me. But as long as I lived as private citizen, as long as I had nothing to do but just attend to my mother's business, certainly it was some business, I was content; I could not do otherwise. But as I went on this farm, as I told you, when I had come in contact with them Prussian officers, how they meddle in everything! It was a pretty place. In one way I liked that place. But they notoriously meddle into everything. That I didn't like.

Q. Why was it, then, Rhuberg, that your return to America was deferred until 1913?

A. I sold that place as soon as I had a good show to sell it. I could not afford to sell at a loss. And, as I told you, I got sick in 1909, and I came here, I was an invalid. If I get well earlier, I be here earlier.

Q. When you returned in 1913, did you go direct to Sherman County?

A. No, I stayed while in Roseburg, close to Roseburg—10 miles from Roseberg—by a friend. But I came up here right away, and visited in my old neighbors; stayed 14 days, and then went back to Roseburg, and stayed awhile in Ashland that winter. I was invalid; it was a hard winter for me. My eyesight failed, that I could not read. I had to walk

(Testimony of Julius Rhuberg.)

always on a cane, and in reality I gained my health again in Eastern Oregon, and was able to do some work. And when I stay out there on the Mackin ranch for months I saw nobody else, just them people what belonged there. And sometimes I even stayed all alone; did the work that had [87] to be done there. And it ain't my way to go around and speak with neighbors, or visit them. I go very seldom to the town, except I had to go, when nobody was there, to get the mail; else mostly the boys brung the mail out. In the fall I had to haul the wheat. When I was several days to other house. I hauled wheat the last two seasons.

Q. Well, Rhuberg, what was your condition at the time you landed in America, at New York, in 1913—physical condition?

A. I wasn't very good. My folks, my relation, they was sore at my wife to let me go in that condition; but I would not wait any longer. I waited as soon as I know it was a little pleasant to travel, but I left in the early part of April. When I came to New York, I remember that I could hardly cross the street, that policeman was watching me, he came up to me and helped me to cross the street. I stayed in Hoboken—just went over to New York on one occasion, to get my railroad ticket.

Q. How many times since you went back to Sherman County have you been out of the county?

A. I wasn't out of Sherman County since I came there till the 3d of January, as I get arrested on this case.

(Testimony of Julius Rhuberg.)

Q. That was January of what year?

A. This year, 1918.

Q. And from 1913 to 1918 you hadn't been out of Sherman County?

A. I was not out of Sherman County. I came here—1913 I came here, on the 12th day of May, to Roseburg—I traveled [88] slow. I stayed a few days. The 12th day of May I was in Roseburg. Then I stayed in Roseburg two months, and I came up and visited my friends here in Sherman County, and went back to Roseburg, and stayed in Ashland that winter. Next spring, in 1914, I came from Roseburg up to Sherman County, and never left Sherman County till now, in January, I came down here for a week here, I got arrested.

Q. Now, at the time you left Germany in 1913, did you know anything about any impending trouble, or war, between that nation and any other?

A. I walked as invalid—we walked on a park—I didn't hear no war talk, hardly at all; sometimes maybe in the paper, but I couldn't read myself. I had to get my wife or somebody to read newspaper to me. In one day I heard war talk. It was in the last winter I stayed in Germany. My wife came home one day, and she told me there is an officer who reads English lectures, and I ought to go and listen to it. So I went to this lecture. It was one of these Carnegie officers, and he spoke about famous men. It was in a big hall. It was maybe over a thousand people listened to it. I wondered myself that it was that much English-speaking people that

(Testimony of Julius Rhuberg.)

could understand it, in Hamburg. There is lots of them. Then I heard the last lecture he give. That was the last lecture he spoke about Cecil Rhodes, and then he told the people of Hamburg good-bye. And then it is he said there was some men out in the desert—I never forget what that man said. This was before this war started. There was some men out in the [89] desert, and from away off he saw something awful, and as he came there he saw it was a man, and as he came up then he saw it was his brother. And this man say then it will be a crime against civilization if war between England and Germany, that first early. But I heard it was about the war between England and Germany. Then I heard no talk about it there.

Q. Mr. Rhuberg, when you came back to the United States in 1913, what did you bring with you in the way of personal effects?

A. I brought two big boxes, commode, with all my clothes in, and I brought the bed along, and I brought along for our household some silverware.

Q. What kind of bed?

A. I brought a feather bed along.

Q. Well, why did you bring that stuff?

A. Why, I wanted to use it.

Q. Did you have any intention of returning to Germany when you came over in 1913?

A. No, I had no intention. As I told yesterday, it was my friends know that I was talking about trying to buy land there again.

Q. Now, what character of work were you doing

(Testimony of Julius Rhuberg.)

up on the Mackin ranch and on the Von Borstel place?

A. I did all the work what I was able to do. [90]

Q. What kind of work was it?

A. I made the chores; I made wood; and after I got in better condition, I helped in the harvest; helped in seeding. For the first year, for the first two years, I just drove the neck team in harvest, but last year I was able to do stacking again; and after that I was able to haul wheat, maybe a month or six weeks. This spring I haul wheat over from the home place to the Mackin land for seeding purposes.

Q. Did you hear any of the testimony of Mr. Davis concerning some flags and a picture of the Kaiser, that he saw in the house on the Mackin ranch some time last fall or summer?

A. Yes, I heard that.

Q. Those flags that he spoke of, would you be able to identify them if you saw them? A. Yes.

Q. Will you examine these?

A. Yes, I know them.

Q. Various flags and pennants, and state to the jury whether or not these are the flags that were spoken of in the testimony of Mr. Davis?

A. Yes, they are.

Q. And were all of these flags on the wall of the room he referred to in his testimony?

A. I believe there even was more. I don't know. In the first year I was there, I know the boys brought some cigarettes.

Mr. GOLDSTEIN.—What did you say? Did you

(Testimony of Julius Rhuberg.)

say you didn't know? [91]

A. No, I said there maybe was some more there.

Q. Were these all there?

A. Yes, they was there. You see, the first year I was over at the Mackin ranch, I remember the boys bought these kind of cigarettes, or where they got them I can't tell. And the girls, they put them on the wall, or the boys maybe did it, for all I know. I had nothing to do with them flags. In the wintertime, spare time, the boy make models of ships, and he put the American flags on it. That is kind of bachelor layout there on the Mackin ranch.

Q. Are any of these flags your flags?

A. No, none of them are mine.

Q. Did you put any of them on the walls?

A. No, sir.

Q. Did you have anything to do with the arrangement of the flags around the house?

A. No. The girls, they clean up that house when they come over there occasionally.

Q. What girls?

A. Mr. Von Borstel's; been small girls; the oldest is now 18. But when she put up the flag, I believe she was 14 or 15.

Q. That German flag there among the others, did you have anything to do with putting that up on the wall of the house there?

A. No. You see they have been all the same kind what come in cigarettes with packages.

Q. Do you smoke cigarettes? A. I do not.

Q. Did you, or have you in the last three or four

(Testimony of Julius Rhuberg.)

years? A. Smoke cigarettes? [92]

Q. Yes. A. No, I never smoked cigarettes.

Q. Or buy them?

A. I never bought a cigarette. The boys maybe offered me one, and I smoke them, but I didn't like it. I maybe didn't smoke half a dozen in my whole life.

Q. What is the fact as to whether or not the German flag in the house there was put above the American flags around the same room?

A. That German flag was on the wall, and this models of them ships, they was on the desk, and it maybe just happened that it put them down below, where the desk was standing. Nobody, I think, thought anything about it.

Q. Were there any American flags on the walls of that room? A. Yes.

Q. That were still higher than the German flag?

A. Yes, there was same kind, there was American flag between it, and there was high up over a door.

Q. Now, what about this picture of the Kaiser that has been spoken of? Where did that come from, and whose was it?

A. I left my wife to put in my commode some pictures from my relation, picture from the house at Pinneberg, was pictures, and picture from the Kaiser she put in there. She was satisfied, I believe, in her own mind that some day she had to follow me; and so she give me along all what was possible, when I can get over on my ticket. I brought along some curtains already, some portierres, that

(Testimony of Julius Rhuberg.)

she put around the commode, and put [93] in big boxes. I brought two big boxes along.

Q. Well, where did this picture come from, and whom did it belong to?

A. You see, my wife had it. I don't know where she got it, if she bought it or somebody make a present to her of it; I cannot tell.

Q. Who put it up there at the Mackin ranch?

A. It was in the room; it was kind of bachelor house. I believe the girls did it.

Q. Did you hang it up?

A. No. No, I never bothered with decorating that house there.

Q. Did you take it down?

A. I took it down; in January, when I got arrested; I never thought of the picture—never looked on the picture hardly. You see that is the room, mostly we stayed in the kitchen, and sleep upstairs, and we have no fire there in the winter time, so hardly ever anybody entered that room; and I paid no attention to it until I found it out when I came home. They talked about a picture. Then I thought I better take it down. As soon as I came back to the Mackin ranch I took it down and put it away. But then I don't see no harm in it. Last week ago I read in the paper, Friday evening, in the "Evening Telegram," they just took those pictures down here in the public school where they had before had.

Q. What school was it, do you remember, that they took the pictures down here last week?

(Testimony of Julius Rhuberg.)

A. I don't know. I just read it in the "Evening Telegram." [94]

Q. Rhuberg, when did you first meet Corliss Andrews, and where?

A. I met Corliss Andrews the first time at the Mackin ranch. I know Frank Von Borstel brought him down there to me.

Q. Where had Andrews been living prior to that time, do you know?

A. No, I don't know. All what I know, he stayed before that—he had no work, he stayed at a hotel, and the hotelkeeper wouldn't keep him any longer. All I know from the boys what he owed, it was debts. So we took him for pity's sake. I had him there, I believe, nearly two months. I did the cooking. First he didn't was quite satisfied with my cooking, but after a while he get satisfied with it. And he acted as pretty good boy. He most company with that youngest boy from Von Borstel, Amandus. I hardy saw him except at meal times, or evening; in the evening, when we played cards. I don't remember talking wiht that boy any serious things. He was too much of a boy them days.

Q. He stated that the first time he met you was at the home ranch of the Von Borstels. Is that correct?

A. No, he didn't. That whole fall I was hardly over to the home ranch. He was at the home ranch, I know, but I wasn't.

Q. The time he stayed with you down there a couple of months at the Mackin ranch, did you ever

(Testimony of Julius Rhuberg.)

discuss with him the submarine policy of the German Government?

A. I believe not. I hardly think so. You see, them [95] boys—there was snow on the ground—there wasn't a day mostly but after they did the chores they went out hunting, and in the evening we played cards, or made nonsense. I had my time to quiet them down occasionally. They just act like two boys; neglect their work and went out playing. I don't can remember that I talked such with him.

Q. Did you hear him testify to conversations which he claims to have had with you in the home of the Von Borstels, the home ranch, in October or November of last year?

A. I seen Corliss after he left there at the Mackin ranch. I didn't see him for quite a while. I was very seldom going to Kent. And during wheat-hauling time I seen him a few times, and all he talked about then was about his girl; he like to get that girl. He asked me several times if I didn't know somebody wanted to loan him a thousand dollars that he can go ranching—rent land and get outfit. And I told Corliss, "You do the same way like I did. Go over to the other side of the country and herd sheep for a while, and you will earn one thousand dollars, and you don't need to borrow it." And I all the time considered him pretty good boy, when I saw he was trying to get his girl and I knowed the parents of the girl was against him; they didn't want it. So one day I encouraged him a little. I say to him, "Some day the old man will give in.

(Testimony of Julius Rhuberg.)

A year ago you went with that girl." I told him one day, "You are pretty smart fellow trying to get money that way as easy as working [96] for it." And I met him in the last year. Once he came over there to get a bull for his employer. I helped him. He was there at dinner-time, at the dinner-table, we have him some dinner, he and another man. Then Mr. Von Borstel was there, and the boys, and I herd them the bull out to the field; and we had trouble with that bull. I don't believe we talked anything about war, or anything. Then I know that remark from them boys, their talk. Not that he just told it to me, but as I know that boy. I met him again in the wheat-hauling time. He jumped on my wagon, and drove along with me a little ways, and then jumped off. I know he was afraid, or he didn't like to go to the army, and in some way, to console him, to make him feel a little better, I told him these words: "If the Germans should take you as prisoner, then tell them 'Send me' to your new German relations you have over there." I know I read it in the paper, I know some Germans get letters over there that they work their prisoners on a farm. "In that way you maybe have easier time." And that is all what I told Corliss Andrews. I met him then again twice. We was hauling wheat. In the evening he passed through there, as he said, he wanted to see the boys. I believe one time the boys wasn't there. He came in just for supper, and the people gave him supper. He stayed there a little while, talked around, and went on again. Last time he was there,

(Testimony of Julius Rhuberg.)

the second time, I was sitting and reading the paper, and he knowed me pretty well, when I all the time mean it good with that boy. So he tried [97] to monkey with me. He got me on my foot, when I told him, I says, "Corliss, you better go home and play with your woman, and leave me alone." That was the conversation. And from that time I didn't see him again. I met him once after this, after I got arrested, on the road. My eyesight ain't very good. He tried to stop and talk with me, or be friendly, but I just rode on. I said, a man can tell such stuff against me as he did, while I treated him always good, I don't know what to make of it.

Q. Did you, on either of those occasions when Corliss Andrews came to the Von Borstel ranch and talked with you, or at any other time, tell him that the moneyed men had caused the United States to enter the war against Germany, or words to that effect?

A. No, sir; no, sir. I never will told such foolishness.

Mr. HANEY.—Just a moment. The previous question asked by counsel was, Did you hear Mr. Andrews make a certain statement on the witness-stand? By actual count, the witness took 14 minutes to tell the whole story of his life with Corliss Andrews. Now he is asked the question, Did you make a certain statement to Corliss Andrews? I don't object to his answering yes or no, but I object to his going further into another 14 minutes' argument to the jury. I want to be fair about it, but

(Testimony of Julius Rhuberg.)

it does seem to me we will never get done with this case unless he is held down to answers to the questions. He says, No, he didn't made the statement. Now, I object to any further explanation.

COURT.—He has a right to make such explanation as [98] he desires to make the answer clear. But I don't think that you ought to argue the case to the jury. Simply tell the facts, and let it stop there.

Mr. HANEY.—Your Honor, may I be heard just a moment? What more facts could there be, when he says, "No, I didn't make the statement"? The question was, Did you make the statement to Corliss? He says, no.

COURT.—He says no; but there might be some explanation about it.

Mr. JOHNSON.—As to this 14 minutes, this defendant is confronted with a possibility of 60 years in the penitentiary.

Mr. GOLDSTEIN.—There is no necessity of that. I realize that it should be serious. The Court has already passed upon the objection of counsel. It is unnecessary to go in and explain the reason why you want him to say something that is absolutely immaterial, simply because it is a serious case. All cases are serious. There is no necessity of bringing before the jury matter that has no right to come before the jury.

COURT.—The term of sentence is not a matter for the jury. You may proceed with the testimony.

Q. Answer the question. Have you answered?

(Testimony of Julius Rhuberg.)

A. Yes.

Q. Did you, on those occasions or at any other time, state to Andrews that Germany was in the right and the United States was in the wrong in this war, and that you hoped that Germany would win, and that Germany was sure to win, or words to that effect? [99]

A. No. What that I heard—he didn't tell me that—but Corliss Andrews, that was the talk around there, asked last spring—

Mr. HANEY.—I object to this witness stating what the talk was.

COURT.—State to the jury what Andrews said to you, if anything. I understand you to say you didn't make that statement?

A. I didn't sir, say it.

COURT.—Well, that is an answer to the question.

Q. Now, is there any explanation you want to make of your answer?

A. Yes, I will tell it to you.

Q. What is it?

A. Now, what I heard is this.

Mr. HANEY.—What this witness heard in the neighborhood generally—he is asked about a conversation between himself and Corliss Andrews. I don't mind him explaining what he said or how he said it, but I object to him going into what was said to him.

COURT.—Did you have any talk of that kind?

A. No; no.

COURT.—That answers the question. I don't

(Testimony of Julius Rhuberg.)

see what further explanation is needed.

Q. Did you have any conversation with Andrews along the line of that statement, or anything connected with it? A. No.

Q. Did you ever say to Andrews on those occasions, or any other occasion, that one German could lick ten Americans? [100]

A. Such foolishness—such child talk—I believe a man of my years would not make such talk. No, I did not.

COURT.—Answer the question.

A. No.

Q. Did you ever state to Andrews on those occasions, or at any other time, that the United States was so slow that Germany would have it whipped before we got ready for war, or words to that effect?

A. No.

Q. Did you ever state to Andrews on those occasions, or at any other time, that the United States had no business in the war? A. I did not.

Q. That it ought not to have gone into it, or words to that effect?

A. I don't talk with that boy that way.

Q. I didn't hear your answer. A. No.

Q. Now, did you hear the testimony of Luther Davis? A. Yes.

Q. On the stand in this case. How long have you known Davis?

A. I seen him first as he was working for a neighbor, for Mr. Schassen. I went over there the first year I came back, and I seen him several times;

(Testimony of Julius Rhuberg.)

maybe meet him on the road, or there at Schassen's two or three times. Then I get acquainted better with him. A year or so ago he got married. He married his employer's daughter. And he moved on a place he rented, that lays half way between the Mackin ranch and Kent. And his wife was away much, [101] and she didn't make up with the people. So to console that woman—lived there alone, and I knowed her as a little girl—I took pity on her; sometimes they came down to the Mackin ranch—we raised pretty good garden there; give them some vegetables. And if on occasion I went to Kent, any that woman saw me, sometimes they watched me when I was riding past, when I came back she called me in for dinner. And this spring, when I was hauling wheat, in April, they came out and asked me to stop for dinner; and I told them I had no time—they were waiting for the wheat. And after the first—I don't know what occasion—I was down in the evening, I came to Kent, and Luther Davis came up to me, and offered—he want to bring me out to the home ranch. He was always friendly to me.

Q. Did you ever go to their house when you were not invited?

A. No. I never went to the house, except on two occasions when I passed through there, and last fall once he got seed wheat from Von Borstels, and he didn't need it all, and I went there to get that wheat again. I hauled that 25 sacks of wheat. Just at dinner-time he was coming out of the field, and he

(Testimony of Julius Rhuberg.)

told me, "Julius," he says, "you go in and get your dinner." He is young man—he can handle sacks better than I. "I will make load it on." I went into the house and spoke to Mrs. Davis. Then Mrs. Davis—she knows my wife—she asked me if I heard from my wife, and I told her no. That is over a year ago that I got the last card. A letter I didn't get for a year. I don't know how my wife getting [102] along there. That is what I told to Mrs. Davis.

Q. Do you know the man William Mitchell who testified in this case for the Government?

A. When I seen it the indictment, I didn't know who this man Mitchell was. Then I asked them boys, "Do I know Mr. Mitchell? I believe I never seen him." But then the boys inquired, and they told me, "Yes, you seen him all right enough." And now, then, I remember it was last spring, I was hauling rock from the ground and depositing it alongside of the fence; across the road was a man plowing with six-horse team, and he seen me unloading them rocks there, and he halloood to me if I had water; and I told him, yes. So that man came across the road through them two fences, and I give him a drink, and I asked him to help me load on some heavy rock, and he helped me. And the next day he came over again—he was plowing there still; but he don't leave his team standing very long; just was coming over, get a drink, and say a few words. And then, as he testified, I maybe said that if it had been in Germany we had beer in the jug instead of water.

(Testimony of Julius Rhuberg.)

That is afterwards I never seen Mr. Mitchell again, and before I never seen him. He maybe seen me on the street. But I ain't acquainted with the man, and I paid no attention to it.

Q. Did you ever say to William Mitchell and Luther Davis, or to either of them, that the moneyed men had caused the United States to enter the war against Germany?

A. I never seen them both together. That is the only time I seen Mitchell. [103]

Q. Did you ever make that statement to either of them on any other occasion? A. No.

Q. When you might have seen them separately?

A. That is the only time I seen Mr. Mitchell, as I just stated now.

Q. I say, did you ever make that statement at any time, to either one of them, when you might have seen them separately? A. No.

Q. Or did you ever state to either one of them that Germany was in the right and the United States was in the wrong? A. No.

Q. And that you hoped Germany would win, and that Germany was sure to win? A. No.

Q. Or words to that effect? A. No.

Q. Or ever tell them, or either of them, that the best thing the enlisted men and men of registration age could do when they got in battle would be to throw up their hands and let the Germans take them prisoners, or words to that effect? A. No, sir.

Q. Did you ever tell either of them, on any occasion, that one German would lick ten Americans, or

(Testimony of Julius Rhuberg.)

words to that effect? A. No; no.

Q. Did you ever tell either of them, on any occasion, [104] that the United States was so slow that Germany would have it whipped before the United States got ready for war? A. No.

Q. Did you ever tell them, or either of them, that the United States had no business in the war, should not have gone into it, or words to that effect?

A. No, sir.

Q. How long was Mitchell over there at the time you talked with him last spring?

A. He could not be very long over there; maybe the longest I think he can be there five minutes. A man cannot leave his team standing long—his six-horse team.

Q. Did you hear the testimony of Mr. Davis that you had stated to him that you had fought in the Franco--Prussian war? A. Yes, I heard that.

Q. Is that true? A. I was nine years old.

Mr. GOLDSTEIN.—Answer the question.

A. No.

Q. Did you ever say to him that you had fought in that war? A. No.

Q. Did you ever tell Luther Davis, or any other person, that Liberty bonds would soon be selling at 25 cents on the dollar, or words to that effect?

A. No, sir.

Q. Did you have any talk with Davis about Liberty bonds at any time?

A. I hardly believe—I will say no. [105]

Q. Did you ever tell Davis of any experiences your

(Testimony of Julius Rhuberg.)

family had had in connection with the German war bonds?

A. I don't believe, sir, that I did. Then I think he is too ignorant to understand it.

Q. Did you hear the testimony of Sproul?

A. Yes.

Q. Who was on the stand yesterday as a witness for the Government? A. Yes, sir.

Q. How long have you known Sproul, and where and when did you first meet him?

A. I seen Sproul once last fall. We was working on the fence. I was driving team, I sitting on the wagon. Then Sproul came along in the buggy. He speak to them boys, and talk to them boys, first about hay or straw. I know nothing about that. And then they was speaking there—I know the mostly talk was that long years bartender, and that he had some kind of disease, venereal, and after that how he say that man, what I heard, or what the boys I believe what said, it was a rich man's war. He had reputation there to be a socialist. And all that he said, the only good word what I heard out of that man's mouth about his country was that American sailors or American Navy was good shots. And then I said, that is only what I said, I says, "Shooting goes as far as it goes." I read in the Scientific American, about in the Spanish war that after this investigation, it was in this naval fight, I read in the Scientific American that in the battle of San Juan, Cuba, after the battle was over, and the investiga-

(Testimony of Julius Rhuberg.)

tion of the Spanish works, [106] it was just three per cent hits.

Q. Did you have any other talk with him about war subjects? A. No.

Q. Did you get off the wagon at that time?

A. No.

Q. Were you doing the talking?

A. I was holding a little ways back. He did the talking to them boys mostly, not to me. And drove up a little further, and I maybe went on the wagon took hold of some posts. I don't remember exactly that any more, but I don't believe that I left the wagon. I have to guarantee—I have to take care of my horses.

Q. Did he get out of his buggy—Sproul?

A. I don't believe.

Q. How long was he there, Rhuberg?

A. Oh, he maybe stopped 15 minutes.

Q. Was that the only time you ever saw him?

A. That is the only time I ever saw Sproul.

Q. Now, what about this talk with the preacher? Tell the jury what occurred that time.

A. Last spring he came down to the Mackin ranch with Mr. Bourhill, the banker. And this Mr. Bourhill, he had some business, as I found out afterwards, and so he went up to the house to talk to Mr. Borstel about that. And Mr. Bourhill left that preacher with me. I was just in the barn, cleaning the barn. That man came to me, Mr. Bourhill made me acquainted with him, and I went to my work, he followed me into the barn, and began to talk about

(Testimony of Julius Rhuberg.)

horses. And what I remember it struck me first, we have fine big [107] horses, and he said it was a nice stallion and it was a big overgrown mare. And I thought it was no use talking stock with such a man that knew nothing of it. But then at last it drifted to beer-drinking, and he said to me, how it happened that about beer-drinking that none of them Germans hold the record in athletic games; and I told him I think so if the men who have to go every year, or have to go three years into the army, after they come out of the army they don't like it any more, these athletic games. And I said, after all, it must be pretty strong men in this war they march 30 or 40 miles a day. I told him them facts, when I was in the army every evening pretty near the year around we have beer soup. I told him my brother, my only brother who is living, he is minister in Holstein, in my native state, and that he had no objection against beer-drinking. And when he said about the Red Cross, and I maybe said that, I said we have no wounded yet, and I don't know much about the Red Cross do yet, the soldiers over in France, and we had nothing—I don't know what I said.

Q. Did you at that time or at any time, in talking with the preacher or with any other person, justify or attempt to justify the sinking of the Lusitania?

A. No, sir.

Q. Have you ever, at any time, done so?

A. No, never would say such thing. In our talk, the boys maybe listened, if I talk to responsible man

(Testimony of Julius Rhuberg.)

what understand it, as I know international law, and we did it in the Civil War, contraband ships certainly the enemy had [108] a right to sink it; but a ship with passengers, that is wrong. If I read it—even I am born, as you gentlemen knows, in Holstein, and brought up as a German, when I read it in the papers it hurt me that they do it.

Q. Have you at any time, in talking with any one, justified the sinking of ships carrying contraband, without first making the search and seizure required by international law? A. No, sir.

Q. And the removal of the crew to a place of safety? A. No.

Q. Counsel for the Government has stated that you are a man of some means, worth probably \$20,000. What is the fact as to that, Rhuberg?

A. I inherited quite a little money from my father; some I saved myself. Now that money is invested some way, as I told yesterday evening, in a farm what I had to pay for. I wrote my wife, she send me statement two years ago, and that statement I never get answer. I get other letter in which she told me that she sent me statement. At present how my financial standing is, I have no idea. I don't know if the Government get hold of it; if the German Governments didn't tackle it or monkey with it I have no idea at present.

Q. Of what money you have, what proportion of it did you inherit from your father, and what proportion did you make in this country?

A. I didn't make much money in this country. I

(Testimony of Julius Rhuberg.)

made money here, I lost it, as I told you, in that hard winter of 1888. Then I was four years here, but I saved and worked steady, [109] and that hard winter that let me out in debt; I had to straighten up the debts again. Then came 1893 and '94.

COURT.—It isn't necessary to go into that history. Just answer his question shortly.

Q. What proportion of that money did you make in this country, and what proportion came to you from your father? You can answer that shortly.

A. For my homestead I got \$2,000, but my work I pretty near put in it, that is, this \$2,000, which I went in 1904 over to Germany, and maybe took \$2,500. With that money, German money which I got in exchange in New York, 10,000 marks, that is \$2,500, that is what I took to Germany.

Q. Is that all of the money you took out of the United States? A. That is all.

Q. Where did any other money you have come from?

A. I had inherited quite a good deal, and then from that farm what I bought in Holstein I make after I sold, I made quite a little money on it. I paid there, when I bought the place, when I had to take it, I thought my relation put it a little hard on me, I had to take it for 1,000 marks, for \$250 an acre; but land went up, and as I sold it I got 1,500 back, so I made quite a little money on it. And after I sold the place I invested some—I bought American railroad shares in Hamburg, in the bank you can

(Testimony of Julius Rhuberg.)

buy them. And I know I had Southern Pacific and Erie. I inherited some stock from my father. I know that was in Finland, and it was Brunswick, and it was [110] Italian papers; but what they are worth today I have no idea; and if my wife keep them today, I don't know either. I get no statement, as I told you.

Q. What railroad stocks did you buy while you were in Germany?

A. Erie and Southern Pacific; and sometimes I have Union, too, I don't know.

Q. Sometimes you had what?

A. Union Pacific. But I sold some again and bought some. That is all what I can do. I was in Hamburg, that I went to broker, and told him what cash money what was on hand I like to buy them papers for.

Mr. JOHNSON.—At this time, your Honor, I want to offer those flags in evidence.

COURT.—Very well. Is there any objection?

Mr. HANEY.—No objection.

Cross-examination.

Questions by Mr. HANEY:

Mr. Rhuberg, you say you were born in 1861?

A. Yes.

Q. You came to America in 1884? A. Yes.

Q. You returned to Germany in 1900?

A. I returned in 1899, December.

Q. Beginning of 1900? A. Yes.

Q. You returned herein a few months, sometime in 1901? A. No, in 1900 I returned.

(Testimony of Julius Rhuberg.)

Q. Then you returned to Germany in 1904?

A. Yes, sir.

Q. And you stayed there until 1913?

A. Yes, sir. [111]

Q. Then you came back to America, and have been in Sherman County practically ever since?

A. Yes. It was, as I said yesterday, first I stayed a few months in Roseburg, or close to Roseburg.

Q. What do you consider yourself worth at this time, Mr. Rhuberg?

A. I don't can say exactly.

Q. What did you testify on the former trial?

A. Yes, maybe around 20,000.

Q. You testified square up that you thought about \$20,000, didn't you? A. Yes, sir.

Q. Of that \$20,000, what portion of it is now in this country?

A. I say I took traveling money. I took \$1,100 along.

Q. Please answer the question.

A. \$1,100 I took out; but I spent at this time that.

Q. \$19,000 of your \$20,000 is in Germany now, isn't it? A. Yes, sir.

Q. That is right?

A. I tried hard to get money here.

Q. Did you tell Corliss Andrews that the moneyed men had caused the United States to enter the war against Germany? A. No.

Q. Did you ever tell Corliss Andrews that Germany was in the right and the United States was in the wrong, and that you hoped that Germany would

(Testimony of Julius Rhuberg.)

win? A. No. [112]

Q. And that Germany was sure to win? A. No.

Q. Did you ever tell Corliss Andrews that the best thing that a drafted man could do, if he got in a tight place, would be to throw up his hands and let the Germans take him prisoner? A. No, sir.

Q. Did you ever tell Corliss Andrews that one German could lick ten Americans? A. No.

Q. Did you ever tell Corliss Andrews that the United States was so slow that Germany would have this country whipped before we got ready for war?

A. No.

Q. Did you ever tell Corliss Andrews that the United States had no business in the war, and ought not to have gone into it? A. No, sir.

Q. Did you ever tell Corliss Andrews that Liberty bonds would soon sell for 25 cents on the dollar?

A. No, sir.

Q. Did you ever tell any one of those same statements to Luther Davis? A. No, sir.

Q. Or to Sproul? A. No.

Q. Or to Mitchell? A. No.

Q. Or to the Reverend Mr. Smith? A. No.

Q. Then, if all of these gentlemen say you did make these statements, they are telling an untruth, are they?

A. They don't tell the truth, sir. [113]

Q. Just answer me: Are they telling an untruth if they say you did?

A. They don't tell the truth.

Q. Did you have any discussion concerning any

(Testimony of Julius Rhuberg.)

one of those statements with Luther Davis in the presence of Luther Davis' wife?

A. No, I had not.

Q. If she says you did, then she is telling an untruth, is she? A. She must.

Q. Do you think all of these men have conspired against you? A. Yes, sir.

Q. What is the reason you think they have conspired against you?

A. That is a puzzle to me.

Q. It is what?

A. It is a puzzle to me. I don't understand it.

Q. You claim to be a good, loyal American citizen, do you? A. Yes, sir.

Q. You believe that, if any man did make these statements to drafted men, conscripts in the National United States Army, he would be guilty of treason, don't you? A. Yes, sir, sure.

Q. You think he would be a traitor to this country? A. Yes, sir.

Q. And you think he should be punished?

A. Yes, sure.

Q. Did you ever justify the sinking of the Lusitania [114] to any one of these men? A. No.

Q. Then if they say you did, they are mistaken about it? A. Yes, sir.

Q. You think that is additional evidence that there is a conspiracy against you? A. Sure.

Q. What support have you given the Government since it entered the war?

A. Sir, I told you just now I don't have much

(Testimony of Julius Rhuberg.)

money. I have to impose on my friend.

Q. I didn't ask you that. I asked you what support you had given this Government since it entered the war?

A. This Government, I bought \$100 worth of bonds this last loan.

Q. When did you buy that?

A. This last loan.

Q. When?

A. About two or three weeks ago, it is now; three weeks ago.

Q. And at the former trial of this case is the first time you ever contributed anything to this Government? A. Yes, sir.

Q. Have you ever contributed anything to the Red Cross? A. No.

Q. Have you ever contributed anything to any of the Government projects for the support of our soldiers and sailors? A. No.

Q. You have been solicited to do so, haven't you?

A. I don't understand. [115]

Q. Yes, you do know whether you have or not?

A. No, I never have.

Q. You never have been solicited by anybody?

COURT.—I don't think he understands the word "solicited."

A. No.

Q. Has anybody ever asked you to contribute to any of these funds? A. No, sir; no.

Q. Did you ever have a discussion with the pastor, Mr. Smith, concerning the Red Cross?

(Testimony of Julius Rhuberg.)

A. Yes, just what I told.

Q. You heard his testimony? A. Yes, sir.

Q. You heard him say that you said you would not contribute to the American Red Cross?

A. I never said that.

Q. You deny that? A. I deny it.

Q. You heard his testimony that you said that you would contribute to the German Red Cross, because "We have wounded," referring to yourself?

A. I never. I saw no occasion, and I never did contribute anything to the German Red Cross.

Q. Did you tell Mr. Smith?

A. No, I don't think so, how that man can say that.

Q. You think he is another conspirator against you in this matter?

A. I don't know how he came to do it.

Q. You don't know how he came to do it?

A. No.

Q. But you know he is not telling the truth about it? [116] A. No; I didn't say that.

Q. You say those flags that were put up in your room were put up by the girls?

A. It wasn't my room where the flags was, in my room where I slept.

Q. It was in your house?

A. No, Mr. Von Borstel's house.

Q. It was in the house where you were living, wasn't it? A. Yes, sir.

Q. You say the girls put them up there?

A. Yes, they papered the wall and put them flags on there.

(Testimony of Julius Rhuberg.)

Q. Where are the girls that put those up?

A. Von Borstel's girls.

Q. Where are they now?

A. They been at home.

Q. The girls put up this picture of the Kaiser, too, did they?

A. Who did it I cannot say, but I believe she did.

Q. Where is the girl that put the picture of the Kaiser up?

A. I believe it was the oldest girl, but that is three or four years.

Q. Where is she now?

A. She is home; last three years.

Q. Where did she get the picture of the Kaiser to put up?

A. That picture, I emptied my boxes; you see all those pictures in she put, those pictures from my relations too. I got them out of the boxes and put them there.

Q. You put it up after you came back from Germany, or had it put up?

A. I didn't tell anybody to put it up. [117]

Q. You brought it back from Germany?

A. I brought it back from Germany.

Q. Why did you take it down?

A. Why I took it down?

Q. Why did you?

A. Why, I took it down, there was some objection, I heard, that maybe I was arrested with them people.

Q. When did you take it down?

A. When I came back, it was the 4th of January.

(Testimony of Julius Rhuberg.)

Q. After your arrest? A. Yes, sir.

Q. Before the United States Government entered the present war, what was your attitude toward the war then in progress between Germany and the allied nations? A. Between Germany and England?

Q. Between Germany and England?

A. My idea was that was with my people over there.

Q. Did you discuss that matter with people generally?

A. You see, I had very few occasion to speak to people. Certainly I talked to Mr. Von Borstel or some acquaintance came.

Q. Mr. Von Borstel is also German, isn't he?

A. Yes.

Q. A former German army man?

A. I didn't understand.

Q. Mr. Borstel is also a former German army man, is he not? A. Yes, sir.

Q. Served in the Franco-Prussian war?

A. Yes, sir.

Q. Now, who else did you discuss your views with?

A. Sometimes when I met, the first year, I seen some of [118] the German neighbors there, and some of them that was in the German army, some not, and we read the paper and we talked about that war. Now, Mr. Borstel and I talked as soldiers, a good deal in this same way as you maybe here have no idea how the army, how it is today. We talked a good deal about it as you will talk over a baseball game though you are not directly in it.

(Testimony of Julius Rhuberg.)

Q. Then you did discuss pretty generally your views, which were sympathetic with Germany as between Germany and the allied nations? A. Yes.

Q. Before we entered the war?

A. Before the United States went into the war.

Q. When did you quit talking that way?

A. You see, after United States went into the war, that was last spring, we mostly had our work. I met very few men during the summer, and we had no occasion to talk much war.

Q. Why did you quit when the United States went into the war? A. Why, I didn't quit just.

Q. You didn't?

A. No, when we talked together, we saw it in the newspapers.

Q. Why didn't you quit?

A. What we seen in newspapers United States had no troops over there, then I first spoke about America and Russia and Germany, all the time spoken of was the war going on in Russia, and occasionally we talk about it.

Q. Well, now, I don't understand yet: Did you quit talking [119] favorably to Germany after the United States went into the war?

A. Favorably—yes, we quit that.

Q. Why did you?

A. I hardly talk about it after the United States went into the war.

Q. Why did you quit talking about it when the United States went into the war?

A. We had no occasion—I had no occasion to talk

(Testimony of Julius Rhuberg.)

much. If you know the condition how they are there, you will understand it, that for days and days you don't meet a man.

Q. Well, is there any reason why you met less people after the United States went into the war than you did before the United States went into the war?

A. I am citizen of this country. After we went into the war with Germany—I have to-day a feeling for my relation or my people over there; but you know as German Government is nothing to me; it is nothing to me for 34 years.

Q. Is the American Government anything to you?

A. Sure.

Q. What are you doing for the American Government now?

A. Now all what I can, and that is just my work what I put in.

Q. Are you doing anything except advising American soldiers to quit and throw up their hands?

A. No, I don't do such things.

Q. You didn't do that? A. No.

Q. They say you did. A. I did not. [120]

Q. They say you advised them that we couldn't win; that Germany was right and that she ought to win. A. I didn't do that.

Q. That one German could whip ten Americans.

A. No.

Q. Is that your conception of supporting this country?

A. That is foolish talk, somethings like that.

(Testimony of Julius Rhuberg.)

Q. I think it is. I agree with you. How many times did you meet Mr. Mitchell?

A. That one occasion.

Q. Just one time?

A. One day, or next day, too; twice he came over there.

Q. Do you think he has any particular reason to come in here and perjure himself against you?

A. I don't know.

Q. You don't know of any? A. No.

Q. Do you think this boy Luther Davis would have cause to come in here and perjure himself?

A. I don't understand that, that man comes here and talks that way. I heard it on the former trial—I didn't know what to say.

Q. Do you think his wife would come and take the stand and commit perjury as to what you said?

A. His wife said last time she heard nothing, she know nothing about it; and this time she says so.

Q. She wasn't examined about that. You heard her testify that she heard the conversation between you and Luther Davis, didn't you?

A. On the former trial she said she heard nothing.

[121]

Q. Do you think she perjured herself?

A. I don't know.

Q. You don't know. What reason do you think this preacher Smith would have for coming in here and stating the thing that he says he heard you say?

A. If that man let me alone there, why he comes to me and talk, that is the same, why he comes to me

(Testimony of Julius Rhuberg.)

and maybe twists my words around in my mouth and speak here different. Maybe he understand me wrong.

Q. Well, do you think it is anything wrong for an American citizen to talk to another American citizen about the Red Cross?

A. No; but then he just shall stay to the facts, and maybe not twist them around. Maybe he has something else in his mind, and he was maybe prejudiced against me on account of my German birth.

Q. Did he say he was? A. No, he didn't.

Q. Was there anything that led you to believe he was prejudiced against you?

A. Prejudiced against me a little when I talk prohibition with him.

Q. It was because you were anti-prohibitionist, and not because you were a German?

A. Yes, that I believe.

Q. You believe that justified him in his mind in coming in here and perjuring himself?

A. I don't can say that. I can't tell that.

Q. You don't believe it yourself, do you?

A. What?

Q. You don't believe he perjured himself, do you?

[122] A. No, I can't say.

Q. Sproul, you say, was a former saloonkeeper?

A. That is what he said, or bartender; that is what he told them boys.

Q. When did you commence to take umbrage at people for engaging in the saloon business?

A. I said nothing against them.

(Testimony of Julius Rhuberg.)

Q. You offered some criticism against him, didn't you? A. No, that ain't any criticism.

Q. What was the purpose of mentioning it?

A. I thought I heard yesterday that he said he never worked in a saloon.

Q. He did say so. Now, what reason do you think he had for making the statements against you? Is he prejudiced against you for anything you said?

A. No, that is the only time I seen that man. I don't see why in the world that man comes here and says some things against me. I don't understand that.

Q. You don't know of any reason why he should?

A. No. I never did that man any harm. I never knowed him. He comes there and speak there a few minutes on the road, and that is the only time I seen him in my life; and then he comes here and speak against me that way.

Q. Do you recall a statement that Mr. Sproul made concerning the invasion of Germany by American troops? A. No, I don't remember that.

Q. Do you remember what answer he says you made to him?

A. German troops invading Belgium?

Q. No. I ask you if you recall what he said to you about [123] the invasion of Germany by American troops. A. No, I heard nothing of it.

Q. You heard nothing about it? A. No.

Q. You don't recall having said anything to him in reply to that?

A. No. Most of the time I was the distance from

(Testimony of Julius Rhuberg.)

here as far as you are sitting away from him.

Q. Did you have any discussion with Luther Davis or Corliss Andrews about the purchase of Liberty Bonds? A. No.

Q. None whatever?

A. I believe we talked about it as I was hauling the wheat.

Q. Now, who talked about it?

A. Luther Davis and I.

Q. What was the conversation?

A. Now, you see, I know how Luther is fixed. You see he—

Q. I don't want that. I want to know what he said and what you said.

A. I don't can tell exactly. I don't know that any more.

Q. You don't know what you said nor what he said?

A. No. But I know that much, that I never will say that the papers will come down to 25. I know that, and that is nonsense.

Q. Did you tell Luther Davis that the rich people had caused this country to go into the war?

A. No.

Q. Did you tell that to Mrs. Luther Davis?

A. No.

Q. Did you tell Luther Davis that the Germans were justified in sinking the Lusitania? A. No.

Q. Did you ever have any discussion with him about the [124] Lusitania? A. No.

Q. None whatever; and none with his wife?

(Testimony of Julius Rhuberg.)

A. No.

Q. What? A. No, sir.

Q. Did you have any discussion with Luther and his wife concerning your return to Germany?

A. I told Mrs. Davis, as I didn't tell them all my private affairs, but while she asked about my wife, I told her when the war was over I will go, if I have to go, to Hamburg and get her; I want to see her again. I didn't see her now for over five years. And if she had courage enough to come to New York alone, I can save the traveling expenses. But if she don't, and if she don't can straighten up my business, I am compelled to go. But I just asked the banker Mr. Bourhill—I told him about it, which way was to get money. He inquired here by the banks in Portland, and they told him it was no show. I want to buy land.

Q. I am talking about the conversation between you and Luther Davis. I don't care anything about the conversation between you and the banker.

A. Yes.

Q. Did you tell Luther Davis or his wife you were about to return to Germany? A. Yes, sir.

Q. Did you tell them you were going next year?

A. I don't know. I told them as soon as it was possible.

Examination by the COURT.

Q. At the time this Government went to war with Germany on April 6, 1917, did you or did you not regret that this Government should take a hand in the war? [125]

(Testimony of Julius Rhuberg.)

A. Yes, your Honor. You see, certainly, I am born in Schlewig-Holstein, I hated to see that it had to come to it.

Q. You regretted, then that this Government should go to war with Germany, your own country?

A. You see, while it may be no way out of it—

Q. Answer the question.

A. And we have to do our duty, as we do our duty to this country, even if it was hard.

Q. Well, then, you regretted that this country should go to war with Germany? A. Yes, sir.

Q. Well, now, if you were called upon to-day to go to war yourself, which Government would you choose to fight for?

A. Surely my country; that is the United States.

Q. Your country, the United States?

A. When we had that Mexican trouble, you see, that boys—maybe it was for my part foolishness, but this American they say some things like that, then I told them I like to go along, even if I can do nothing else was to drive a team.

Q. Where was that—Mexico?

A. When we had that trouble with Mexico two or three years ago.

Q. Did you know what part Germany was taking in that Mexican trouble?

A. No. You see, then I told you my eyes are bad; I just have to take what they read me out of the newspapers; but what Germany had to do with it I had no idea. [126]

Q. You understand now that Germany has been

(Testimony of Julius Rhuberg.)

taking part in the Mexican trouble, don't you?

A. I read it in the papers, yes, some of it.

Q. Do you indorse that? A. No, surely not.

Cross-examination (Continued).

Q. Do you believe the story that Germany intervened in the Mexican trouble?

Objected to as not proper cross-examination.

Mr. HANEY.—I presume it is not proper cross-examination. If they insist, I will withdraw it.

Mr. SCHMITT.—You made us stay within the limits.

Mr. HANEY.—However, the witness has stated that he is loyal to this country. It seems to me that I might test him out on that, but I will withdraw the question.

Q. Have you ever discussed with any one the invasion of Belgium by Germany?

A. I don't remember.

Q. You don't remember? A. No, I can't tell.

Q. Well, during all of the months immediately—

A. Anyhow, not with these boys.

Q. Wasn't that question discussed by you?

A. You see, I didn't discuss it with them boys; surely not.

Q. Did you discuss it with anybody?

A. They don't know nothing of it. I hardly think they know where Belgium was before the war.

Q. Did you discuss it with anybody?

A. I maybe did that. [127]

Q. How do you feel about the question of the invasion of Belgium? Do you feel it was justified?

(Testimony of Julius Rhuberg.)

A. You see, it was a neutral country. It was the same way as Schleswig-Holstein. I know my father was opposed against Prussia in the war. It was the same way as they did in our country in 1864.

Q. Do you justify the invasion of Belgium?

A. No, I don't justify; even as they did not justify invading our home country.

Q. And you don't justify the sinking of the "Lusitania"?

A. No.

Q. You think that was wrong? Do you believe the stories that civilians in Belgium have been impressed into practical slavery by Germany?

A. I am sure I don't know.

Q. How?

A. I don't know. I read nothing about that.

Q. You never read anything about that. How do you feel about the bombardment of unfortified towns? Do you feel it was justifiable?

A. No, it ain't; just fortified city is allowed by law.

Q. Then you think the bombarding of London and Paris was hardly justified?

A. As far as I know, Paris is fortress; London is open city.

Q. Well, having all these views, have you ever expressed to anybody at any time dissatisfaction with Germany's position?

A. Sir, these questions like this bombarding them cities, I think, as I told you, it is fortified place it is right, [128] if it is open city it is wrong, to my notion.

(Testimony of Julius Rhuberg.)

Q. That is not my question. I say, if you have all the views you indicate to me, and have had them, have you ever expressed to anybody a criticism of or dissatisfaction with Germany's position to anybody?

A. I don't believe it.

Q. You don't believe you ever have?

A. No, I don't believe so.

Q. Then, you must be very strongly impressed with that feeling?

A. You see, all of this war talk what we had there, what I had with responsible men out there, we talked about it, as I told you, as an outsider looking on a baseball game. That way we talked about that war before we was in the war.

Q. Before we got into the war?

A. As the war was between Germany and England and France.

Q. Did you feel the United States was neutral prior to the time she went into the war?

A. Sir, I have never formed an opinion over it. But you see, you read papers from both sides, you read the New York City side and you read the Oregonian, the one says so, the other say so; now, I ain't judge.

Q. You understood the United States was neutral prior to the declaration of war by our Congress and President? A. Surely she was neutral.

Q. Then, did you have any discussion with Luther Davis or Corliss Andrews concerning the shipping of food or ammunition to England? [129]

A. Sir, that is a question what I don't can decide.

(Testimony of Julius Rhuberg.)

Q. I didn't ask you to decide it. A. No.

Q. Did you have a discussion with these men about it?

A. I don't remember that. I don't believe it.

Q. You don't think you ever discussed it?

A. I don't believe it.

Q. Did you ever tell Luther Davis that we were not neutral because we were selling munitions and food to England and to France?

A. To Luther Davis, no; no, I did not.

Q. You believed it yourself, didn't you?

A. What?

Q. You believed yourself that we were not neutral, didn't you?

A. You see, sir, I told Von Borstel I form my opinion now. I just read it out of papers. They are some things that are high politic what I don't understand.

Q. You seem to be remarkably well versed in international law and military procedure, and in so far as discussions with these boys are concerned, with the question of neutrality; why have you no opinion about any of those things now?

A. You see, in my spare time, you know, they are the only pleasure I have, that is reading; and I like to read, and I study it well, I know better as them boys the history of the United States. I like to read the War of the Rebellion, and I want to discuss with boys—I did it with our boys, tried to; but them boys they don't know it, and I give it up.

(Testimony of Julius Rhuberg.)

Examination by the COURT.

Q. Just one other question: You said that you regretted [130] that this country went into war with Germany? A. Yes, sir.

Q. Do you think this country ought not to have gone into war with Germany, and allowed Germany a free hand against the allies?

A. No, your Honor, I don't mean that. But I thought the German Government ought to do some things to prevent it, before it came that far.

Q. How is that?

A. I thought the German Government ought to do some things to prevent it.

Q. To prevent war?

A. Yes, sir, to prevent war with the United States.

Q. The question I put to you was this: do you say that this Government ought not to have gone into war with Germany, and thus have allowed Germany a free hand against the allies? Is that your position?

A. Your Honor, if our Government, as I see now, it was justified to go into it. I believe that now. I believe that our country is justified to go in it now.

Q. You mean this country? A. Yes, sir.

Q. When you speak of "our country" you speak of this country?

A. Yes, I speak of the United States.

Q. You think, then, that this Government did right in going to war with Germany when it did go to war?

A. Yes, sir.

Q. That is your honest conviction?

(Testimony of Trueblood Smith.)

A. That is my conviction—honest conviction.
[131]

Cross-examination (Continued).

Q. You say, in answer to the Judge's question, that you now think this country was justified?

A. Yes.

Q. When did you determine that this country was justified?

A. By degree—you read it—by degree it comes over you. You don't catch some things only at once.

Q. No, I don't get your point. When did you determine that we were justified in entering the war?

A. It grows up on a man by degree. You don't can say right away. I know the first trouble what I knowed the United States had with Germany was over the sinking of the "Lusitania."

Q. When did you determine that this country was justified in entering the war?

A. I don't can tell you the date. It grows on me by degrees.

Q. A month ago?

A. I don't can tell you the date; no, sir.

Q. Two months ago?

A. Longer than that ago.

Q. The first of January of this year, had you then determined it? A. Oh, long before.

Q. Had you determined it when you were talking to Luther Davis and his wife?

A. I don't know; and I don't think that I talked with Luther Davis and his wife that way.

Q. Had you determined it when you talked with

(Testimony of Julius Rhuberg.)

Corliss [132] Andrews?

A. Corliss Andrews that I talk with six months ago or seven months ago.

Q. Had you determined then that this country was justified? A. Oh, I don't know that.

Q. Had you determined it when you talked to William Mitchell?

A. It was a year ago, and Mr. Mitchell—I didn't thought about such things.

Q. Had you determined then that this country was justified?

A. I don't know that. It growed up by degrees. You see, we form our opinion out there in the country, that is all what we can, out of newspaper talk.

Q. Had you determined it when you talked to Mr. Sproul?

A. That was last fall—I don't know.

Q. Had you determined it when you talked with Preacher Smith?

A. That was a year ago; I don't know.

Q. Did you ever determine prior to your arrest?

A. Sure.

Q. When?

A. When I got arrested the first of January, then we was a long time into the war. We got used to it. First it come just as somethings you don't—it comes too sudden.

Q. Had you determined it prior to the time you took down the Kaiser's picture?

A. I paid no attention to the Kaiser's picture, that hung there. Surely then I knowed there was some

(Testimony of Julius Rhuberg.)

objection to it, what do I care about the picture?

Q. Do you want to tell this jury that that picture was not put up there at your suggestion? [133]

A. That ain't put up there at my suggestion.

Q. It was not.

A. No. They wanted to decorate a little them walls.

Q. It was taken down at your suggestion, wasn't it? A. I took it down myself.

Q. At the time you took that picture down, had you determined that this country was justified?

A. At that time, yes.

Q. And that was about the time you were arrested, wasn't it? A. That was after I was arrested.

Q. Yes. That is all.

Redirect Examination.

Q. Had you determined that the United States was justified in entering the war before you were arrested? A. Long before that.

Q. Did you know what you were arrested for?

A. No, I had no idea. I had no idea. It just happened. I was visiting over a friend, and we went up to Shaniko, and drove back, and he was going around the way by Kent, and the deputy marshal—I know him well—he came up to me and say, “You are wanted at Moro.” I told him, “What they thinks they want with me? I don't can go this way.” I just had overalls and Mackinaw on. And I went out of the auto, went in again. I thought he made fun with me. Then he showed me his star, and that evening—I say, “I don't can go

(Testimony of Julius Rhuberg.)

that way." Then he told me, "I am satisfied you have to go to Portland." And I says, "Dick, I can't go this way." I say, "You stop [134] and talk with the sheriff." The sheriff came up there.

COURT.—Do you want him to go over that matter?

Mr. JOHNSON.—Not concerned about it.

COURT.—Never mind that.

A. I had no idea until I came to Hood River. Then they told me what it was.

Q. Rhuberg, why is it that you haven't given more financial support to the war measures of the Government?

A. I don't had money enough. I just had few dollars, and I like to stretch it as far as possible. I hate to impose on my friends.

Q. Did you make any effort to get your money over here from Germany? A. I did.

Q. What effort?

A. I told Mr. Bourhill—he is banker of the State Bank, and he had bank before in Grass Valley—he knows my financial condition. And I ask him to inquire, and he inquired here by the leading banks in Portland if there was a way to get money, and two months ago he told me it was impossible. If I had idea of it—I had no idea that war would start—I have it before. There was nice place to buy; my friend was going to help me; but I hate to borrow money.

Q. Did you give anything to any of the campaigns for war funds? A. No.

(Testimony of Julius Rhuberg.)

Q. Do you recall the Armenian Drive? [135]

A. Oh, just little things, yes. Yes, I did that. I don't believe—I believe Young Men's Christian Association, what it was.

Q. Any of the others of those smaller drives?

A. Yes, I remember one day on the street—I don't know what kind it was—they asked me, and I give something.

Recross-examination.

Q. I think I asked you a while ago whether you had subscribed to the German Red Cross?

A. No, sir.

Q. You have not? A. No.

Thereupon the witness was excused. [136]

Testimony of Carsten Von Borstel, for Defendant.

The defendant, to further sustain the issues upon his part, called as a witness Carsten Von Borstel, who, being duly sworn, testified that he resided in Kent, Sherman County, where he has lived for thirty-three years; that for thirty-three years he has resided in the United States, during which time his occupation has been that of farmer, now having a ranch of about thirty-eight hundred acres; that he knows the defendant Rhuberg, does not know exactly how long they have been acquainted, but that during the past four years the defendant has lived upon the ranch of witness.

The witness further testified as follows:

Q. Do you know a young man called Corliss Andrews? A. Yes.

(Testimony of Carsten Von Borstel.)

Q. Andrews has testified for the Government in this case that in October or November of 1917, on two or three occasions he talked with Rhuberg at your house and in your presence, at the place known as the Home ranch, and that on those occasions Rhuberg stated to Andrews that the moneyed men had caused the United States to go into the war against Germany, and that Germany was in the right and the United States was in the wrong, and that Rhuberg hoped that Germany would win, and that Germany was sure to win, and that the best thing the enlisted and drafted men could do when in battle would be to put up their hands and let the Germans take them prisoners, and that one German could lick ten Americans; that the United States was so slow that Germany would have it whipped before the United States got ready for war, and that the United States had no business in the war, and ought not to have gone into it, or words to that effect. Now, state to the Court and jury whether or not those statements, or any similar statements, were made by Rhuberg to Andrews, in your presence, at any time.

A. I didn't hear any statements like that.

Q. If you had heard them, would you remember them? A. Sure.

Upon cross-examination, the witness further testified that he was sixty-nine years of age, had resided in the United States a little more than thirty-three years, and was [137] a naturalized American citizen, having been naturalized in Moro in the year

(Testimony of Carsten Von Borstel.)

1892; that he owns two farms, aggregating thirty-eight hundred acres, worth about twenty-five dollars per acre, all accumulated since coming to the United States; that he approved of the war policy of the United States and its efforts to defeat Germany, and had bought Liberty Bonds about a month before (Third issue) in the amount of \$750.00 and \$500.00 of the Second issue; also had contributed a couple of dollars to the American Red Cross and had made no contributions at any time to the German Red Cross; that he is probably worth one hundred thousand dollars; was a former Prussian soldier and had served in the Franco-Prussian war, but was not in the siege of Paris.

The witness was thereupon excused.

Testimony of Harvey Smith for Defendant.

The defendant, to further sustain the issues upon his part, called as a witness HARVEY SMITH, who being duly sworn, testified that he resided near Grass Valley, Sherman County, where he had lived for over forty years, and before the county of Sherman was created; that he is a farmer, owning a ranch of 1,360 acres, knows the defendant, and has known him for eighteen or twenty years, and during the period of his residence upon his (defendant's) homestead.

The witness further testified that during the period of his acquaintance with defendant he has known defendant's reputation for truth and veracity in the community in which they had both resided, and that

(Testimony of Harvey Smith.)

defendant's reputation is good; that he also, during that period, has known the reputation of defendant in that community for being a good, law-abiding citizen, and that such reputation was considered very good.

Upon cross-examination witness testified that since [138] 1913 he had met defendant only once, which was last summer, until very recently.

The witness further testified as follows:

Q. Do you know anything about his reputation as being a law-abiding citizen since that time?

A. Well, only what talk we had. We met after about seven or eight years that we hadn't seen one another, and we got to talking—we got to talking of this war; and he talked very loyally—very loyally. I was awful surprised when I heard it.

Q. When did he have that conversation with you?

A. It was one Sunday some time last summer; I think in harvest time.

Q. Now, that is the only time you have seen him since he returned from Germany?

A. Well, that was the first time. I have seen him since. I think I saw him about once since only, until I saw him here in the courtroom.

Q. Have you heard his reputation discussed any since he returned from Germany?

A. Well, yes, at that time a year ago and so on.

Q. I am not talking about the conversation between you and Mr. Rhuberg.

A. I know. I understand.

Q. Have you heard his reputation discussed any

(Testimony of Harvey Smith.)

since his return from Germany?

A. Yes, quite frequently. I heard of him returning some time before I met him, and they were discussing him then considerably.

Q. Who was discussing him?

A. Glad that he was coming back. Well, different people that had known him, and so had I known him. They told me that he had returned from Germany, and so on, speaking about him. That was about all.

Q. Have you heard his reputation discussed any during the present year?

A. Not a great deal, no.

Q. You haven't heard any laudatory expressions of his good citizenship? [139]

A. I haven't heard but very little about it. I have been very busy lately, in the last year. I don't get to town.

Q. How far do you live from the vicinity of Kent?

A. Oh, I must live 14 to 20 miles from Kent. I guess it is 20 miles from my ranch.

Q. You haven't heard any discussion of him since the first of January?

A. I have heard some little remarks, you know, since this thing came up, but only slightly. I don't get away from the ranch very often.

Whereupon the witness was excused.

Testimony of L. Barnum, for Defendant.

The defendant, to further sustain the issues upon his part, called as a witness L. BARNUM, who be-

(Testimony of L. Barnum.)

ing duly sworn, testified that he resided in Moro, Sherman County, where he has lived for forty years, and where he is engaged in the business of banking and farming; that he is Vice-president of the Bank of Moro and has known defendant since the year 1900; that he bought defendant's grain and handled his banking business from 1900 to 1903; that he knows the reputation of defendant in the community in which he resides for truth and veracity, and that such reputation is very good; that he likewise knows his reputation in that community from 1900 to 1903 for being a good, law-abiding citizen, and that during that period such reputation was very good, but that he knows nothing about his reputation in that respect since 1903.

Upon cross-examination the witness testified that he did not know anything about the present reputation of the defendant as to being a law-abiding citizen; that he is County Chairman of the State Council of Defense and himself reported the defendant for disloyalty; that since 1903 he knows nothing about the reputation of defendant as a law-abiding citizen except as a matter of hearsay; that during the year 1918 [140] and the latter part of the year 1917 there were about twenty-five complaints against him.

Upon redirect examination the witness was asked whether there were as many people taking the opposite stand and testified that there were a number; also testified that he made no investigation of the

(Testimony of L. Barnum.)

complaints which he, as County Chairman of the Defense League, had sent to Portland.

The witness was thereupon excused.

Testimony of S. B. Holmes, for Defendant.

Thereupon the defendant, to further sustain the issues upon his part, called as a witness S. B. HOLMES, who being duly sworn, testified that he resided eight miles south of Grass Valley, Sherman County, Oregon, where he has lived for almost thirty-two years, and where he is engaged in farming and stock raising, owning over fifteen hundred acres of land and farming in addition thereto some rented land; that he has known the defendant for about eighteen years or a little more; that during that time he has known his reputation in the community in which both witness and defendant reside for truth and veracity and for being a good law-abiding citizen, and that such reputation of the defendant is good.

Upon cross-examination the defendant testified that Grass Valley is about seventeen miles distant from Kent; that most of the discussion witness had heard of defendant's character or reputation during the year 1918 he had heard in Portland; that he had heard something about this case at the time defendant was arrested; that he could not tell right at this present time that defendant had the general reputation in the community of his residence of being a good, law-abiding, loyal American citizen, and that what he knew about him generally was what he had learned prior to this war; that [141] in the last

(Testimony of S. B. Holmes.)

few years he had not seen very much of defendant, nor heard much concerning his reputation since defendant returned from Germany, and that he does not know the present reputation of defendant in the community where he lives as to defendant's being a loyal, law-abiding citizen.

Whereupon the witness was excused.

Tesimony of Arthur J. Bibby, for Defendant.

Thereupon the defendant, to further sustain the issues upon his part, called as a witness ARTHUR J. BIBBY, who being duly sworn, testified that he lived seven miles from Kent, Sherman County, and had lived in Sherman County nearly twenty years, during which period he had followed the occupation of farming; that he was formerly in the United States Navy, where he served for two years and four months; that he has known defendant for seventeen years, the homestead taken up and lived upon by defendant having then adjoined the ranch of witness; that witness and defendant now reside about twelve miles apart, and that during the time of his acquaintance with defendant witness has known the reputation of defendant in the community in which he resides for being a truthful man, and that such reputation is good.

Upon cross-examination the witness testified that he spoke German and occasionally talked to defendant in that language; that he resides twelve miles from the place of residence of defendant, has known defendant "off and on" about seventeen years, and

(Testimony of Arthur J. Bibby.)

has met defendant three or four times since defendant's return from Germany in 1913; that on one occasion he met defendant at Grass Valley, where defendant was talking about the German Government; that on this occasion defendant was not condemning the German Government. [142]

The witness further testified as follows:

Q. He was praising it, wasn't he?

A. Well, the principal talk was about—I don't remember much about it, because there was no importance to it.

Q. Well, Mr. Bibby, it was important enough that you spoke to him about his mannerism, and about what he was saying, wasn't it? A. Yes.

Q. And you advised him to keep his mouth shut, didn't you? A. I didn't say that.

Q. Not in *that* words? A. Yes.

Q. But you advised him to restrain his tongue, and not criticize this Government?

A. I said that the Kaiser wasn't a very popular man now and that he had better not say much about that. That is all.

Q. He was speaking in a laudatory manner concerning the Kaiser then? A. In a what?

Q. He was praising the Kaiser? A. Well—

Q. Now, Mr. Bibby, when was that?

A. That was last fall some time.

Q. The fall of 1917, you mean?

A. Well, yes, 1917.

Q. That was in Kent or at Grass Valley?

A. Grass Valley.

(Testimony of Arthur J. Bibby.)

Q. And at that time you took occasion to tell him to be a little careful about the question of his patriotism, didn't you? A. Yes, sir.

On redirect examination the witness testified:

Q. What was the talk that was taking place there in connection with which you made that remark?
[143]

A. Well, he was talking about—as far as I can remember—that the Kaiser owned some land there and in dairying, such stuff as that. He was not condemning us.

Q. He was not condemning our country?

A. No.

Q. And the talk about what—in connection with the Kaiser's dairy?

A. Well, something about butter-fat and stuff what he was making there.

Q. Well, did he say anything at that time, or at any other time, in your presence or to you, derogatory to the United States, or praising the German Government?

A. He was not praising the German Government any that I know of. Only I said not to mention the Kaiser too often now.

Q. I see. That is all.

Whereupon the witness was excused.

Testimony of Luther Davis, for Defendant.

Whereupon the defendant, to further substantiate and sustain the issues upon his part, called as a witness the Government witness LUTHER DAVIS, who testified as follows:

(Testimony of Luther Davis.)

Q. Mr. Davis, when you were on the stand before, I neglected to ask you whether or not you at any time discussed with the defendant Rhuberg war questions, or anything else, in the presence of William Mitchell? A. No, sir.

Q. That is all.

Thereupon the witness was excused.

Testimony of Julius Rhuberg, in His Own Behalf.

Whereupon the defendant, to further sustain the issues upon his part, again became a witness in his own behalf, and having been theretofore duly sworn, testified as follows:

Q. Mr. Rhuberg, Mr. Bibby testified just before the lunch hour—spoke of some incident which occurred at Grass Valley, some time last summer, in which he states he cautioned you against talking favorably *to* the Kaiser or to the German Government. Will you explain to the Court and jury what occurred at that time?

Mr. GOLDSTEIN.—Objected to, on the ground that Bibby was defendant's witness. Bibby had an opportunity to explain the conversation, and for this defendant now to alter that [144] explanation would in that respect tend to impeach his own witness. He is bound by the explanation that was given by Bibby, and for that reason I offer this objection.

COURT.—I think I will hear the explanation.

Q. State to the jury and court what occurred at that time, and how it came about.

A. The circumstance, as far as I remember, as I told you, I am a farmer, and just there in Holstein it was more kind of dairy farm, and one day I read

(Testimony of Julius Ruhberg.)

in the paper that the Kaiser—he is kind of man as much as I knew about him, he puts into everything; he is kind of Jack of all trades, as we say here. So I read in the paper that his cows or this one produced over five per cent butter-fat; and all what ever I can realize was three per cent. And I told my wife I would like to know what the Kaiser treats his cows with. That was the conversation, more or less, what I had. Then Mr. Bibby says, “He ain’t very popular man around here. You better not talk about him.”

Q. He said what?

A. The Kaiser wasn’t very popular man around here; I don’t have to talk about it.

Q. Was that said in a joking or a serious way?

A. Oh, I made fun of it. That I don’t know if you gentlemens know to produce five per cent butter-fat, it takes a whole lot. I never can do that.

Thereupon the defendant was excused.

Whereupon the defendant rested.

Whereupon the Government rested. [145]

That thereafter and thereupon the following proceedings were had:

Mr. JOHNSON.—If your Honor please, before the arguments are begun, I want to renew the motion I presented at the conclusion of the Government’s main case, for a directed verdict on the three remaining counts in this indictment, and for the reasons given at that time.

COURT.—The Court will overrule the motion, and you may have your exception.

Whereupon, following the arguments of counsel, the Court instructed the jury as follows:

INSTRUCTIONS.

Gentlemen of the jury, after having heard the testimony in this case the Court will instruct you as to the law of the case, so that you may be enabled by its application to be the better able to determine in the end what your verdict shall be upon the facts as disclosed by the evidence which you have heard from the witness stand. This case has occupied some time. It is one of vast importance to the Government of the United States, and it is also of great importance to the defendant; and it requires a very careful consideration at your hands. The Court has endeavored to conduct the case so that all matters may have been fairly gotten to your minds for your consideration, so that you may justly determine in the end what your verdict shall be.

This indictment is brought under what is known as "An Act to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States; to punish espionage and better to enforce the criminal [146] laws of the United States and for other purposes." The indictment is drawn under the third section of this act, or rather under the last two clauses of that section. The act provides, having in view these two clauses only, that "Whoever when the United States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall wilfully obstruct the recruiting or enlistment

service of the United States, to the injury of the service of the United States," shall be deemed guilty of an offense, and the statute provides for its punishment.

The indictment is drawn in four counts, but as to the third count I instruct you that the Government has dismissed as to that, so that you will have nothing to do with the third count.

The first count in the indictment is based upon the first clause of the statute that I read to you, and the second and fourth counts are based upon the last clause. Now, it is alleged by the first count that at the times mentioned in the indictment and since April 6, 1916, this Government has been at war, and is now at war, with the Imperial Government of Germany. Then it is alleged that on the 27th day of October, at Kent, in Sherman County, the defendant did wilfully, knowingly, unlawfully, and feloniously attempt to cause insubordination, disloyalty, mutiny and refusal of duty in, within, and amongst the military forces of the United States, to wit, men of registration age and subject to and eligible for draft and conscription under the provisions of the Act of Congress of May 18, 1917, it being the act that I have read to you, by then and there stating, declaring, debating, and agitating [147] to and in the presence of the said men, and in particular one Corliss B. Andrews, as so being of the registration age and subject to draft and conscription, as aforesaid, and to other persons or in the presence of other persons to the grand jury unknown. The utterances alleged are as follows:

1. "That the moneyed men had caused the United States to enter the war against Germany."

2. "That Germany was in the right and the United States was in the wrong, and that he, the said defendant, hoped Germany would win and that Germany was sure to win."

3. "That the best thing (meaning the said men of the registration age and subject to draft) could do when in battle would be to put up their hands and let the Germans take them prisoners."

4. "That one German could lick ten Americans."

5. "That the United States was so slow that Germany would have it whipped before it, the United States, got ready for war."

6. "That the United States had no business in the war and ought not to have gone into it."

Then comes the formal part of the indictment. Now, gentlemen, that constitutes the first count of the indictment.

The second count alleges that on the same day and at the same place the defendant with intent then and there to obstruct the recruiting and enlistment service of the United States, to the injury of the service of the United States, did then and there knowingly, wilfully, unlawfully, and feloniously obstruct the said recruiting and enlistment service of the United States to the injury of the service of the United States by then and there and in the presence of the [148] said Andrews and others making and uttering the following statements. And then the same language is set out in the indictment as in the first count. That count is based upon the latter

clause of the statute which I read to you.

Then the fourth count alleges practically the same except that the time fixed for the uttering of the language is between the first day of June, 1917, and the last day of January, 1918, the exact date being unknown to the grand jury. It is also based upon the latter clause of the statute which I have read to you, and sets out the same language as is set out in the other two counts of the indictment before alluded to.

I will instruct you that this defendant has interposed a plea of not guilty to this indictment. That plea puts in issue every material allegation of the indictment, and casts upon the Government the burden of proving to your satisfaction beyond a reasonable doubt every element of the offense charged. A defendant charged by an indictment of an offense against the laws of the country is presumed to be innocent until proven guilty beyond a reasonable doubt, and this presumption continues with the defendant throughout the trial and until the evidence convinces you to a moral certainty to the contrary. The principle is one adapted to our policy and scheme of government, and it is to be applied in all criminal cases.

You will notice that the espionage statute, as I have read it to you, says, "Whoever when the United States is at war," shall do certain things shall be punished. I instruct you that at the times when it is charged that the defendant violated the statute this Nation was at war with the Imperial Government of Germany and had been since April 6, 1917,

so that you need not give this matter further thought.

Referring to the statute, "Whoever when the United [149] States is at war, shall wilfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States," I will define to you certain terms. Insubordination means disobedience to constituted authority, unruliness. Disloyalty means unfaithfulness to one's government, inconstancy, faithlessness. Refusal of duty is self-explanatory.

It is not necessary, gentlemen, that the men within draft age shall have actually entered the service. It is sufficient that a law of Congress has been enacted providing for thus assembling the military forces of the United States, and that the law is in course of being enforced, and the military forces are being assembled in pursuance of the act. Any wilful attempt to cause insubordination or disloyalty or refusal of duty among those whose duty it is to conform to the act—that is, to register, and thereafter to submit to the call of the Government to enter the service, and to stand ready to comply with all orders and requirements of the Government—constitutes a violation of the act and of its real spirit, intent, and purpose.

So that, if any one do anything intentionally and wilfully that is calculated or designed to incite to or to cause disobedience in those whose duty it is to serve this country in a military or naval capacity, or to discourage such or dissuade them from their line

of duty in that respect, is alike amenable to the statute. I instruct you as a matter of law that at the times stated in the indictment this Government was engaged in assembling its military and naval forces.

We next turn to the declaration of the act, "Whoever [150] when the United States is at war shall wilfully obstruct the recruiting or enlistment service of the United States to the injury of the service of the United States." To obstruct in its broad sense means to hinder, to impede, to embarrass, to retard, to check, to slacken, to prevent in whole or in part, and, as used in the indictment, it means active antagonism to the enforcement of the Act of Congress, that is, the act providing for the recruiting and enlistment service of the United States. The word does not mean as here used to wholly impede, or to block the way. It is sufficient that the act tends to hinder or to make it harder or more difficult for the Government to progress with the work of recruiting or enlistment of men into the service. Whatever has this effect works to the injury and damage of the Government. The injury follows as the necessary and logical effect and sequence of the act of retarding or making it harder or more difficult for the Government to act and carry forward the work of recruiting and enlistment. No other or more specific injury to the United States than this is necessary or required to be shown.

Having defined these offenses, so denounced by statute, you will appreciate how essential it is for the successful prosecution of the war that none of these evils shall possess the men of the country subject to

the selective draft, and that no obstruction shall be interposed in any way to impede, retard, hinder, or make it harder or more difficult for the Government to recruit and enlist men in the military service; hence there is great and wholesome reason for the statute, and the reason for its rigid enforcement is just as potent and overpowering. Nothing should interfere with the military and naval forces of the United States, nor with the work of recruiting or enlistment [151] of the men that go to make up such forces. Any means employed by which to cause the evils enumerated, or any one of them, is denounced. You will note that the term wilfully is employed in the statement of the statute as to what will constitute the offense. This means that the acts complained of must have been done with knowledge on the part of the defendant of what he was doing, and that he, having such knowledge, intentionally did the acts and intended thereby, and had such purpose therein, that the result of doing such acts would be to cause insubordination, disloyalty, or refusal of duty in the military service, or would tend to impede or hinder the recruiting and enlistment of men into the service, to the injury of the United States.

Now, keeping these things in view, you will determine, first, whether the defendant said the things imputed to him in the first count of the indictment, or any substantial part of them, and whether what he did say was calculated and designed to incite those persons to whom the words were spoken, or those who may have heard them, and who were within the draft age, to insubordination, disloyalty, or refusal

of duty in and towards the military service of the United States. If they were, and the defendant so intended that they should have that effect, he will have transgressed the law, and a verdict of guilty should follow.

If, however, these things have not been proven to your satisfaction beyond a reasonable doubt, then you should acquit as to the first count.

Then you will pass to the second and fourth counts, and determine whether the defendant said the things therein imputed to him, or any substantial part of them, and whether [152] what he did say was calculated and designed and intended on his part to obstruct, retard, or to make it harder or more difficult to progress with the recruiting or enlistment of men into the service on the part of the United States, and to the injury thereof. If what he said, if wilfully uttered, had this effect, he would be guilty; otherwise not. These two counts have relation to different occasions on which it is alleged that the acts were done and the words spoken. You must, therefore, consider each of them separately.

In this relation, I direct your further attention to certain language of count four, namely, that Rhu-berg, at the times stated, did "speak, debate, and agitate to and in the presence of William Mitchell and Luther Davis, and others to the grand jury unknown." It is not a material variance between the indictment and the proofs if the evidence fails to show that the language alleged to have been uttered by the defendant, if in reality uttered, or some substantial part thereof, was uttered in the presence

of both said parties Mitchell and Davis; but it is sufficient if the language, or some substantial part thereof, was used by the defendant, with wilful purpose and intent, in the presence of one only of said persons. The essential inquiry is, Did the defendant wilfully use the language imputed to him, or some substantial part thereof, whether in the presence of both or either of them, or of other persons to the grand jury unknown, if any?

I will now instruct you as to intent. Intent and purpose are largely a matter of the mind and heart; and you must be guided pretty largely by a man's acts and demeanor. You must look into his heart and see what a man has there. What a man says as to his intention is not controlling unless [153] the jury believes him. The jurors have a right to and should consider what he says, and give it proper weight according to the credibility due him together with all the other evidence in the case, and determine what his real purpose and intention were. So it is here. You must judge this defendant as to his true intention and purpose, not only by what he says, having in mind his credibility, but by what he has done, by his acts and conduct at the time and previously, and his acts and conduct as you have observed them here. In this relation, I will say that the law presumes that every man intends the natural consequences of his acts knowingly committed, and in a case like this in which a specific intent affecting the act is a necessary element of the offense charged, the presumption is not conclusive but is probatory in character. It is for the consideration of the jury

in connection with all the other evidence in the case, considering all the circumstances as you may find them, including the kind of person that made the declaration, the place at which the declarations in this case were made, the persons who were present, and all the circumstances attending them, to the end that you may judge the real intent with which they were made. In a case of this character the jury may find from the facts and circumstances, together with the language used, the intent, even though the intent was not expressed—directly expressed. In other words, you may infer the intent from the character and the natural, ordinary, necessary consequences of the act.

Evidence has been admitted tending to show that defendant made certain statements derogatory to a friendly attitude on his part towards this Government as against Germany, prior to the time when war was declared by this country against [154] Germany, and prior to the time when this country became engaged in assembling military forces under the selective draft act. This evidence was admitted for a special purpose, and your consideration of it will be confined to that purpose only, namely: To show, so far as it has a tendency in that direction, the bent of mind and attitude of this defendant, whether more favorably disposed towards Germany than to this country, and the effect such attitude, whatever it was, may have had upon his subsequent acts and demeanor, as an aid for determining with what intent he used the language imputed to him by the indictment, if it appears that he uttered the

same, or some substantial part thereof.

The defendant was born in Denmark, but subsequently became a German subject, and later came to this country, and has since become naturalized in pursuance of the laws of the United States, so that he is a citizen of the United States, and is entitled to the same rights and privileges as other citizens of the country. He may engage in the discussion of public questions, and of men and measures, but he, like any other citizen or person sojourning in this country, temporarily or otherwise, is required to observe the laws of this country and the rules and regulations for assembling the armies and navies for carrying on the present war with Germany; and is answerable, like other persons, for the transgression of those laws, rules, and regulations. His oath of allegiance, by which he renounced all allegiance to Germany, binds him firmly to this country; and his loyalty to this country, as against the country of his nativity, should be single, and beyond question. He has taken the witness-stand in his own behalf, and has denied in large measure the utterances imputed to him, and as to others he disclaims any wrong or disloyal intention. [155] In determining touching the credibility of his statements, you will take into consideration the testimony of the Government which tends to his inculcation, his former history and deportment, his bent of mind so far as is disclosed by the testimony, and his predilection, if any, whether favorable or unfavorable to this Government, and what leaning, if any, he has towards Germany as against this Government in the present crisis, or

whether his present leaning is one of loyalty to this Government, and from all this, together with all the other testimony in the case bearing upon the subject of inquiry, you will ascertain and determine, by a calm, fair, and impartial inquiry and investigation, uninfluenced by any present passion or prejudice, the truth of the charges made against him in the indictment, and thus resolve your verdict, whether it shall be one of guilty or not guilty.

The term reasonable doubt, gentlemen of the jury, is one often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt, because everything relating to human affairs and depending on mortal evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty, of the truth of the charge. It is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and directs the understanding, and satisfies the reason and judgment of [156] those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt.

I instruct you, gentlemen of the jury, that you are the sole judges of the credibility of witnesses and the weight and value to be given to their testimony.

The court gives you the law of the case, and it is your duty to take the law implicitly from the court and apply it, and observe the rules as the court has laid them down for your guidance. In determining as to the credit you will give to a witness and the weight and value you will attach to a witness's testimony, you should take into consideration the conduct and appearance of the witness upon the witness-stand; the interest of the witness, if any, in the result of the trial; the motives of the witness in testifying, the witness's relation to or feeling for or against the defendant or the alleged injured party; the probability or the improbability of the witness's statements; the opportunity the witness had to observe and to be informed as to the matters respecting which such witness gives testimony, and the inclination of the witness to speak the truth, or otherwise, as to matters within the knowledge of such witness; and you should be slow to believe that any witness has testified falsely, but should try to reconcile the testimony of all the witnesses so as to give credit and weight to all the testimony if possible. All these matters being taken into account, with all the other facts and circumstances given in evidence, it is your province to give to each witness such credit and the testimony of each witness such value and weight as you deem proper.

I will say, in this connection, that the defendant has been a witness in the case in his own behalf. You will treat him as any other witness in the case and apply the same [157] rules in order to determine his credibility as you would apply to the other wit-

nesses, taking into consideration his interest in the case or the outcome of the case.

Now, gentlemen, there are three counts left for your consideration. These counts, as I have indicated, you may consider separately, and pass upon each of them one by one, and you may find guilty upon one or more counts or not guilty upon one or more of the counts; or guilty upon all, or not guilty upon all, as the facts in the case may warrant your judgment.

What the court may have said during the trial of this case at any time, from which you might infer that the court has an opinion as to the facts proved, you will disregard, because it is wholly within your province to determine the effect of the testimony.

Now, gentlemen, the importance of this case, and the marked public concern that is involved, renders it desirable that it be settled by your verdict. A juror should not yield his honest convictions, nor is he required to in any case; but one may inquire, How does he come by his convictions? He begins to gather impressions as the evidence is adduced, and those impressions will be strengthened or modified, or recast, as the case proceeds. But his ultimate judgment should be withheld until he has had the benefit of discussion and deliberation with his fellow-jurors in the jury-room. There he will be confronted with lines of reasoning and thought that may not have come to him before; and shades of meaning and emphasis, and importance or lack of importance, or bearing of different phases of the testimony, may be examined and discoursed upon, which

may cast an obviously different light upon the general subject of investigation, and each juror may be materially aided by the [158] suggestion, discussion, and reasoning of his fellow-jurors. Thus it may be found in the end that shades of differences in the interpretation of evidence, and respecting the motives which prompted the action of the accused, whatever it may have been, have been harmonized, and that the conviction of one is the common conviction and deliberate judgment of all. There is always wisdom in counsel, and conscientious conviction comes from fair and candid discussion by which first impressions may be digested, and recast if obviously mistaken, and finally matured. I admonish you, therefore, gentlemen, thus to deliberate of and concerning your verdict, and thereby to determine in the end what it shall be.

I further instruct you, gentlemen, that the matter of what punishment shall be meted out should the defendant be convicted is one resting alone in the sound discretion of the court. The jury is not and ought not to be concerned with that, but only with determining as to guilt or innocence. The law in cases of this nature has vested a very wide discretion in the court as to the extent of the punishment, so that it might be adjusted according to the degree of guilt attaching to acts of the accused; the discretion to be exercised under the evidence as developed on the trial.

Mr. JOHNSON.—I am not clear as to whether your Honor has instructed the jury that as to count 4 of the indictment there must be proven by the

Government the same elements of offense—injury to the enlistment service.

COURT.—I instructed about that.

Mr. JOHNSON.—Have they been instructed that that is the law?

COURT.—I have instructed that. [159]

Mr. JOHNSON.—I followed your Honor's instructions very carefully with that point in mind, and I did not get it.

COURT.—Well, I instructed that it is sufficient that the act tends to hinder or to make it harder or more difficult to progress with the work of enlisting or recruiting men into the service. Whatever has this effect works to the injury and damage of the Government. The injury follows as the necessary and logical effect and sequence of the act of retarding or making it harder or more difficult for the Government to act and carry forward the work of recruiting and enlistment. No other or more specific injury to the United States is necessary or required to be shown.

Mr. JOHNSON.—In connection with the Court's instruction concerning the discretion of the Court in the matter of punishment, I think the jury might properly be instructed that this offense is a felony, and that conviction of it forfeits the rights of citizenship, and that is a matter that is without the discretion of the Court; that is something regulated by statute.

COURT.—Well, that is not a matter for the jury's consideration at all.

Mr. JOHNSON.—I desire to save an exception to

the instructions of the Court in that respect.

COURT.—Very well.

Mr. JOHNSON.—And in respect of the Court's instructions defining what constitutes the military and naval forces of the United States; and the Court's instructions concerning the question of variance in the proof and allegations as concerns count 4 of the indictment; and the refusal of the Court to give the instructions requested by the defendant as contained [160] in the copy I furnish the reporter.

COURT.—I will give this part of your instruction. The part that I started to read was not applicable in this case, while it was in the former case. I will give this part of your instruction:

Witnesses have been produced and testimony offered on behalf of the defendant designed and intended to discredit the testimony of certain of the Government's witnesses. I instruct you, in this connection, that it is entirely proper to show that witnesses have made statements contradictory of or inconsistent with their testimony. This is one of the means provided and permitted by law for testing the credibility of a witness and enabling a jury to determine what weight should be given to his testimony. And I further instruct you that a witness found to be false in one part of his testimony is to be distrusted in others.

It is further certified that within the time limited by the rules of the Court so to do, the defendant in writing requested that the Court give the following instruction to the jury.

Counts II and IV of the indictment, while charging distinct violations by the defendant of the statute known as the Espionage Act, in that the statements alleged to have been made by the defendant Rhuberg, and set forth in these counts of the indictment, were made at different times, and to different persons, are yet largely identical in character. They are both drawn under the same provision of the statute, a provision which makes it unlawful for any person while the United States is at war with any foreign power, to wilfully obstruct the recruiting or enlistment service of the United [161] States, to the injury of the service, or to the injury of the United States. You will therefore note that there are three elements which must be proven before a verdict of guilty may be rendered upon either of these counts of the indictment. First, there must exist the state of war mentioned; second, there must be a wilful obstruction of recruiting or enlistment; third, there must result an injury to the recruiting or enlistment service, or to the United States. I instruct you, gentlemen of the jury, that if the Government has failed to prove to your satisfaction, and beyond a reasonable doubt, any one of these three elements of the offense charged in Counts II and IV of the indictment, your verdict must necessarily be as to these counts a verdict of not guilty. And since the Government has not shown that the statements charged in Counts II and IV of the indictment to have been made by the defendant Rhuberg did in fact result in any injury whatsoever, either to the recruiting or enlistment service of the

United States, or to the United States, your verdict upon Counts II and IV of the indictment must be verdicts of not guilty.

Except as portions of the same may be incorporated in the general charge, the Court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

It is further certified that within the same time the defendant in writing requested the Court to give to the jury the following instruction:

I instruct you, gentlemen of the jury, that before you can find the defendant guilty of the charge preferred against him in the fourth count of the indictment, you must find that the statements charged in that count to have been [162] made by him, or some of them, were made substantially in the form alleged, in the presence of both Luther Davis and William Mitchell, and since it conclusively appears by the testimony of both the Government and the defense that no such statements or any statements were made by the defendant since the Espionage Act became a law, in the presenee of these two men, you must find a verdict of not guilty upon this count of the indictment. It is incumbent upon you to try this defendant solely upon those charges preferred against him in this indictment, and if at times other than those mentioned in the indictment he has violated some law of the United States, he cannot in this trial be tried or convicted of such other offenses.

The Court refused to give said instruction to the jury, and did not give the same, and to this refusal,

the defendant asked and was allowed an exception.

It is further certified that thereafter, and after the return by the jury of the verdict in said cause, and within the time limited by the Court so to do, defendant filed and presented to the Court his motion for an order setting aside the verdict and granting a new trial upon the grounds in said motion stated, which motion was overruled by the Court and exception allowed.

It is further certified that thereafter, and within the time limited by the rules and order of the Court, defendant filed in said Court and presented his motion for an order arresting judgment in said cause, upon the grounds in his said motion stated, which motion was thereafter by the Court overruled and exception of defendant allowed.

And now, because the foregoing matters and things are not of record in this case, I, Charles E. Wolverton, the Judge who tried the above-entitled cause in the above-entitled Court, do hereby certify that the foregoing Bill of Exceptions correctly and fully states the proceedings and all thereof [163] and contains, and fully and accurately sets forth, all of the testimony and evidence adduced upon said trial, and contains all the instructions of the Court to the jury, and truly states the rulings of the Court upon the questions of law presented, and the exceptions taken by the defendant appearing therein were duly taken and allowed; that said Bill of Exceptions was prepared and submitted within the time allowed by the order of this Court and the rules thereof, and containing the evidence adduced against defendant

at said trial, and all thereof as aforesaid, is now signed, and settled as and for the Bill of Exceptions in said cause, and the same is hereby now ordered to be made a part of the record in said cause.

It is further ordered that all of the original exhibits introduced in evidence in the trial of this cause and now in the custody of the Clerk of this Court be made a part of this Bill of Exceptions and filed therewith.

IN WITNESS WHEREOF I have hereunto set my hand this 10th day of July, 1918.

CHAS. E. WOLVERTON,

Judge United States District Court.

Filed, July 10, 1918.

G. H. MARSH,

Clerk.

United States of America,
State of Oregon,
County of Multnomah,—ss.

Due, timely, and legal service by copy admitted at Portland, this 24th day of June, 1918.

B. E. HANEY,

U. S. District Attorney for the District of Oregon.

[164]

AND AFTERWARDS, to wit, on the 25th day of July, 1918, there was duly filed in said court, a prae-cipe for transcript, in words and figures as follows, to wit: [165]

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff and Defendant in Error,

vs.

JULIUS RHUBERG,

Defendant and Plaintiff in Error.

Praeceptum for Transcript on Writ of Error.

To the Clerk of the Above-entitled Court:

You will please include in the record of the above-entitled cause to be docketed in the Circuit Court of Appeals upon writ of error of defendant and plaintiff in error Julius Rhuberg, and cause to be printed as the record in said Court of Appeals, the following:

1. Indictment.
2. Plea of defendant.
3. Verdict of Jury.
4. Motion of defendant for a new trial and for order arresting judgment.
5. Order overruling motion of defendant for a new trial and for arrest of judgment.
6. Judgment and sentence.
7. Bill of exceptions.
8. Writ of error.
9. Petition for writ of error and assignment of error.
10. Bond on writ of error.
11. Order enlarging time to file and docket case in appellate court.

12. Praeceptum for transcript. [166]

Dated at Portland, Oregon, this 22d of July, 1918.

G. G. SCHMIDT,

RIDGWAY & JOHNSON,

Attorneys for Defendant and Plaintiff in Error
Julius Rhuberg.

United States of America,

State of Oregon,

County of Multnomah,—ss.

Due, timely, and legal service by copy admitted at
Portland, this 22d day of July, 1918.

B. E. HANEY,

Attorney for Plaintiff and Defendant in Error.

Filed, July 25, 1918.

G. H. MARSH,

Clerk. [167]

United States of America,

District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages No. from 6 to 167, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Julius Rhuberg, plaintiff in error, against the United States of America, defendant in error, in accordance with the praecipe filed by said plaintiff in error as the same remain of record and on file in my office and in my custody.

I further certify that the cost of the foregoing

transcript is \$51.30, and that the same has been paid by the said plaintiff in error.

[Seal]

G. H. MARSH,
Clerk, United States District Court, for the District
of Oregon. [168]

[Endorsed]: No. 3196. United States Circuit Court of Appeals for the Ninth Circuit. Julius Rhu-berg, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record Upon Writ of Error to the United States District Court of the District of Oregon.

Filed August 7, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

